

CALFED BAY-DELTA PROGRAM

HEARING
BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 1097

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO IMPLEMENT
THE CALFED BAY-DELTA PROGRAM

OCTOBER 30, 2003



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CALFED BAY-DELTA PROGRAM

THURSDAY, OCTOBER 30, 2003

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:40 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I call to order this hearing of the Water and Power Subcommittee. Welcome, and good afternoon. Thank you all for coming. I certainly appreciate the interest in today's hearing.

Mark Twain, at one point in time, said, "Whiskey is for drinking, water is for fighting." And I think certainly in California, in regard to this issue, and in many parts of the West, that statement is probably more than just a little bit accurate.

Today, the Water and Power Subcommittee will receive testimony on S. 1097, the Calfed Bay-Delta Authorization Act. This legislation was introduced by Senators Feinstein and Boxer. It authorizes the Secretary of the Interior and various Federal agency heads to implement the Calfed Program, a program that has been working to improve water management in California since its inception with the Bay-Delta Accord in December 1994. Both California Senators should be commended for their efforts in formulating this legislation, and their efforts to improve the very difficult water issues in your State.

This bill authorizes \$880 million for fiscal years 2004 through 2007 for program-specific areas. Authorization for Federal participation in the Calfed Program expired in 2000; however, various program activities have continued to be funded under existing authorities.

I'm looking forward to learning more about this legislation from today's witnesses. In particular, I am interested in understanding the extent of the existing Federal authorities and whether additional authorization is necessary. I would also like to understand how the Calfed Program is progressing, in terms of water-supply reliability, water quality, ecosystem restoration, and levy system integrity. And, finally, I would hope that we would learn how much funding has been expended pursuant to the Calfed Program to date, and how much funding is needed for its completion.

Now, I know that there is a lot of interest in this hearing. We've received many requests from groups wishing to testify. I'd like to note that, under our committee rules, any interested party may submit testimony for the hearing record, which will remain open for an additional 2 weeks.

The committee has already received written testimony from the Hoopa Valley Tribe, which I would like to enter into the hearing record.

We have three panels this afternoon—a congressional panel, the administration, and a public-stakeholder panel—but before we move into the panel, I would like to recognize our committee members for opening statements at this time, in the order in which they arrived.

Senator Feinstein.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

I am pleased today that the Senate Energy and Natural Resources Committee is holding a hearing on S. 1097, the Calfed Bay-Delta Reauthorization Act, introduced by my colleague, Senator Feinstein. As you know, I am a cosponsor of this legislation, which would authorize the Secretary of the Interior and other Federal agency heads to participate in the implementation of the CALFED Bay-Delta Program.

For decades, water allocation in California was conducted through endless appeals, lawsuits, and divisive ballot initiatives. Such battles were painful and they prevented us from finding real solutions to our state's very real water problems. In 1994, a new state-federal partnership program called CALFED promised a better way. Through a plan to provide reliable, clean water to farms, businesses, and millions of Californians while at the same time restoring our fish, wildlife and environment, CALFED was committed to identifying a solution that all water users could share.

Over the years, what has made CALFED work is that it employs a consensus approach that balances the needs of the various interests competing for California's scarce water resources. This balance is most clearly articulated in the Record of Decision (ROD) that was agreed to on August 28, 2000 by the federal government and the State of California. The CALFED ROD outlines clearly the CALFED Bay-Delta Programs' goals and repeatedly reiterates the need to move forward with these goals in a balanced manner.

This legislation authorizes the federal agencies to undertake the actions and activities identified in the ROD. It is our intent that all activities are to be implemented in a manner consistent with the ROD. This legislation is not intended to authorize activities, such as major construction projects, that would otherwise require completion of feasibility studies, permits under section 404(a) of the Clean Water Act and other applicable laws, and project-specific authorizations. In addition, the legislation requires that federal participation in the CALFED Bay-Delta Program proceed in a way that is consistent with other laws.

This legislation provides a carefully crafted, balanced approach for meeting water supply needs, improving water quality, and environmental restoration. Thus, the bill would protect the fragile Bay-Delta region, while addressing the entire state's water needs in a comprehensive manner.

The CALFED Bay-Delta Program has played a vital role in meeting California's water needs. This bill will ensure that continues.

**STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR
FROM CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Madam Chairman, and thank you very much for holding this hearing. I also want to thank Chairman Domenici and ranking member Bingaman for granting my request to hold this hearing. And I want to welcome Congressman Ken Calvert, who's been the leader in the House with

the bill—while not quite like this bill, not that different from the bill, with no major differences that are irreconcilable that I can see.

And I also want to thank Bennett Raley. I want to commend you for your leadership on the Quantification Settlement Agreement, which gradually weans California off of the Colorado River down to 4.4 million acre-feet over the next 15 years. Ron Gastelum, from the Metropolitan Water District, who is also here, and others, played a very critical role in these negotiations. I know it wasn't easy. I want to thank you for your steadfastness in the four districts that were involved.

I think this is really a big chip off of the shoulders of Colorado's River States and their Senators, and I hope it helps us with Calfed. Because, if you think for a moment, you can't remove 700,000 acre-feet of water from California without finding a way to gain other water to replace it.

My view is that if we don't pass a Calfed bill now, California will not have enough water in a decade or so. The electricity crisis is just a forerunner, in a minor way, to what will happen with respect to water. The last time we increased our water infrastructure was the mid-1960's, when Governor Pat Brown built the California Water Project. And, at that time, we were 16 million people. Today, we're 36 million people, and we're going to be 50 million people within the next 15 to 20 years. So this program is not "too much, too soon." It even could be "too little, too late."

The essence of Calfed—and I want to take a couple of minutes—is creating a predictable environment and a cooperative framework for California's communities to plan for their water supply and for protection of fish, salmon, fisheries, and the environment. There are three core principles enshrined in the bill that Senator Boxer and I have introduced: balance—the program goes together, it moves forward together; consistency with the record of decision; and a partnership between the State and Federal Government.

California has many different water needs. Ecological restoration for the environment. Yesterday, I met with Westlands, today I met with the Hoopa Tribe, both of whom have concerns about the Trinity River. They need to come together. They need to settle these concerns. Recycling, desalination, water quality, and conveyance for cities, and storage, both ground water and surface, for our farms and our people. California is prone to drought, so it makes sense to store water taken from wet years for use in dry years.

A Calfed bill must evenhandedly provide for all these interests so Californians, all of them, can rally around it. That's why the bill we have introduced explicitly requires balanced implementation. And I must tell you—and I must thank Senator Kyl, of Arizona. I know he's relieved we're off the Colorado River, or going off the Colorado River, but he has really done yeoman service in helping with this bill, and I'm very, very grateful for that help.

Our bill respects that Calfed has a history, and it respects the past agreements that Californians have made.

I want to just quickly go a little bit into the history. When I came here, in 1993, there were suits all over the place. And I thought, I'm going to call in the stakeholders, and I'm going to call in the Secretary of the Interior, I'm going to see if there's any way people can get out of the courtroom and come around the table and begin

to talk about water without the emotion, but in a very practical solution-oriented manner. So we held a number of meetings, and that kind of began a process which became known as Calfed, whereby, at one point, I think there were 17 different stakeholder groups sitting down and meeting.

The Bay-Delta Accords were negotiated in 1994. And then, in 2000, the record of decision was carefully negotiated by all groups—environmentalists, urbans, agriculture—was signed by the Secretary of the Interior, and was signed by the Governor of California.

This record of decision sets forth specific commitments to enter into a process which will result in the balanced implementation of the water interests of all California.

My bill adopts the record of decision as a framework for Calfed's program components. This is compromise language. It was negotiated at great length, and we need to keep its recognition that the record of—the recognition that the record of decision is our roadmap. Patrick Wright is here from California, along with many others who will be introduced, and they've done a terrific job.

Finally, a Calfed bill needs to create a governance structure so that the Federal Government will participate actively with the State in making important decisions. One water project is federal, one water project is State. It makes sense. So we need a governance structure to ensure an active Federal role in the partnership.

So, I urge the administration and the House to support a bill that increases our water supply, that also protects our environment by proceeding in a balanced fashion. Let me quickly just brief the elements of the bill.

The Chairman mentioned its \$880 million authorization over 4 years. The Federal cost share is limited only to one third. That's far below what most water bills have. This bill includes \$102 million for planning and feasibility studies, for water storage, an additional \$77 million for conveyance, \$100 million for ecological restoration. This means improving fish passages, restoring streams, rivers, habitats, and water quality. The evidence shows that Calfed's ecological restoration is working well to date.

About \$400 million has been spent to improve fish passages, restore wetlands, and otherwise improve ecological restoration since the 1990's. The results are the best part, and no one can debunk it, fish populations are improving. We aren't all the way there yet, but we've made real progress. \$153 million for water conservation, recycling, \$84 million for desalination and water cycling projects, programs to improve water quality for drinking, \$95 million for grants to local California communities to develop plans and projects, and \$50 million for watershed planning and assistance. We have projects for levy stability, with \$70 million, ensuring Calfed has strong supporting science; and \$50 million and \$25 million for program management, oversight, and coordination. And, finally, \$75 million for the environmental water account, which purchases available water for environmental and other purposes.

Now, last Congress, I introduced a Calfed bill in November 2001, and I worked really hard with members of this committee to get the bill favorably reported out of committee by a vote of 18-5. I kept on working to address members' concerns, even after the bill

was reported. Senator Kyl helped me, on his side, convening meetings, asking for concerns, vetting the bill.

I'll tell you what we learned. First, some Senators were afraid that Calfed was going to require more than its fair share of the Bureau of Reclamation's budget. I think, Senator Burns, you were one of those. We cut the authorization level twice, ultimately to \$880 million, to meet these concerns. We also limited the Federal cost share.

A number of Republican Senators were concerned that environmental projects not needing authorization would sail smoothly ahead, while storage projects lacking congressional approval would languish. To meet this concern, we require in the bill specific language for balanced implementation of the program. All aspects have to proceed in a balanced way.

Other Senators were concerned that they had no good handle on the Federal funding on the numerous different agencies involved in Calfed. We met this concern by requiring OMB to prepare a cross-cut budget showing the Federal funding of each of the different agencies. There was concern, at the Bureau of Reclamation, that we would short the projects for other States. We also prepared a specific list of the projects to be funded and how much each one would get. That's all there.

These changes improved the Calfed bill, and a simplified short authorization passed the Senate at the very last minute, at the very last half hour of the session. We could not, however, get it passed in the House of Representatives. With the support of Representative Calvert, with Representative Pombo, I hope and expect we will achieve a different result.

And I had the opportunity, Madam Chairman, to talk a bit to the Governor-elect of California about this. And I'd like to quickly read in the record a letter from him. And it's, "Dear Senator Feinstein, As the Governor-elect, I'd like to express my strong support for advancing Federal legislation on the Calfed Bay-Delta Program. I strongly urge Congress to reauthorize the Federal contribution to Calfed in order to encourage the participating Federal agencies to fully engage in a partnership with the State of California and the stakeholders of the Calfed Program. I share your belief that Calfed can provide a long-term comprehensive plan to address challenges in the Bay-Delta region by balancing water-resource management issues, including supply, quality, and ecosystem restoration. I, therefore, support the efforts that you, Congressman Calvert, and the entire California congressional delegation are taking to help California implement this important program."

I believe this is his first letter to us, and, as such, I hope it indicates the importance of this Calfed Program to our State.

Thank you very much, Madam Chairman.

Senator MURKOWSKI. Thank you, Senator Feinstein.

Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. Thank you very much. And I want to congratulate Senator Feinstein. Nobody has devoted more hours to this issue. And let me say that I sincerely appreciate what they're try-

ing to do in California, and I'm pretty supportive of what they're trying to do. We voiced——

Senator FEINSTEIN. Could you eliminate the "pretty"?

[Laughter.]

Senator BURNS. Huh?

Senator FEINSTEIN. Could you eliminate the "pretty" and just be supportive?

Senator BURNS. Um.

Senator FEINSTEIN. I'm teasing.

Senator BURNS. I thought you ladies liked the word "pretty."

Senator FEINSTEIN. Well——

[Laughter.]

Senator BURNS. And I guess we still have the—almost the same concerns, but I appreciate the movement that Senator Feinstein has made with regard to the Calfed issue. Nobody wants to argue that California does not need more water at the south end of the State. I'm deeply concerned about and saddened by what California is going through out there right now with the fires and everything, but that has nothing to do with this.

I said, from the get-go, that Calfed was starting, kind of, on the wrong end of their problem. They've got to make some more water. They've got to come to the idea that we should expand our ability to store water in the existing facilities, and also maybe look at new facilities. I am supportive of that because of population growth, of the people-pressure on water, and also the ability to do some things on the environmental side, without the cost being very, very heavy on the people-use side.

And I also want to associate myself with the words of Senator Feinstein, when Senator Kyl probably has been one of the key players in these negotiations, understanding the situation, and also understanding the law, as he does. The Senate is very, very appreciative of his talent.

But I went through the 1991 water settlement with California. I didn't sign the conference report then, because it was unfair to, not only California, but also because California played it pretty loose on who controls the water, and I am very much of an opponent of the Federal Government, Washington, D.C., controlling any water, because I don't want to get into a situation where they dictate here what water will be used for. And we fall on our saber about those things. Whiskey's for drinking, water's for fighting, in the West.

So I want to congratulate Senator Feinstein because she has come a long way. There are now conditions in here to enlarge and to enhance water storage and to possibly create more water. And while we might not create any more water, we're sure going to hold it, and for the right reason. And not only for the Delta, but also for agriculture. Because I come to this with one single thing in my mind, and Senator Feinstein knows what it is, and that is, I fight awfully hard to protect the agricultural base, and I will continue to do that.

So I look forward to working on this piece of legislation. I helped Senator Feinstein vote it out of committee last time, and told her that we could work on it. And her word was good, and we have been working on it. And I will continue to do that in good faith.

And I'm particularly appreciative of the work that she's done and the miles that she has come on this piece of legislation.

And I thank the Chair, and I'd ask that my official statement be made a part of the record.

Thank you.

Senator MURKOWSKI. Thank you. And your statement will be included as part of the record.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

First of all, I would like to thank Senator Murkowski for holding this hearing, and Senator Feinstein for all her hard work on this issue. Water in California, as with the entire West, is a complicated and difficult issue. I would like to welcome the witnesses today, particularly Tom Birmingham from Westlands Water District. The importance of having an agricultural interest at the table cannot be stressed enough.

There are people who wonder why I care so deeply about the California farmers, but I have been close to this issue since the early 90's when the Senate passed the Central Valley Project Improvement Act. I never did sign the conference report, partly because the legislation "reallocated" 800,000 acre/feet of water away from South of the Delta farmers. This bill seeks to get some of that water back, and I appreciate that effort. To me, that is one of the key issues this legislation needs to address.

Having been involved with the CalFed legislation for several years now, I can say with confidence that S. 1097 is an improvement over previous versions. I appreciate that the authorization has been trimmed to \$880 million over 5 years, and that there are efforts to make sure that construction of new water storage projects progresses alongside other water conservation and ecosystem projects. This balance is very important to me, because water storage is crucial to meeting the growing needs of any growing state. The fact that the federal cost-share is limited to one-third of project costs is also an improvement.

For all its improvements, I am not ready to endorse this bill just yet. Unanswered questions remain, and maybe we can answer some of those questions in today's hearing. I think we need to make sure we are authorizing activities that are necessary to achieve the goals of better meeting the goals of the CalFed agreement. The follows a "beneficiary pays" model, and while that sounds good I am not sure what it means. The American taxpayer will be paying for 1/3 of these activities, and I am not clear on how the American taxpayer is a beneficiary.

The federal government funds worthy projects in every state in the nation, and CalFed projects may indeed be included in that list. I just want to make sure we know what we're buying and that we can afford it. I look forward to continuing to work with Senator Feinstein and my other colleagues to make sure we are doing the right thing for all Californians and for all Americans.

MURKOWSKI. Senator Kyl.

STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you very much, Madam Chairman. Madam Chairman, I'll just be very brief, but I want the people who have traveled a long way to be here to appreciate some things. I think probably most of you do.

When Senator Burns talked about the way that Senator Feinstein has worked this legislation, he did not overstate the case; he understated it. She is the best in the Senate at buttonholing, lobbying, calling meetings, inundating you with information, more than you want, and using every technique known to man or woman to get people to see the light. And she has just worked extraordinarily hard on this.

There are two other things that you all need to know—and, by the way, the same thing goes for Ken Calvert, but he's not getting the accolades here—but Senator Burns just said that Senator Fein-

stein's word is good, and that probably is the best thing that you all have going for you.

Because this is a project that, in one form or another, and, I think, pretty close to the form that it's been introduced, needs to happen. And it's going to be very hard, because you come along at a time when we've got this big budget deficit, and there were some other problems last year, and so it's a hard thing—even though the project has a great deal of merit, it's a hard thing to get done. And if you were working with somebody here who was not trusted by their colleagues, it would be very difficult. You have just the opposite here.

When Senator Feinstein sat down with me—we've had the same thing in Arizona, these difficult negotiations with lawsuits and all of the rest of it, and you finally have to sit down and try to negotiate them out. And when you're all done the last thing you want is to bring it back to Washington and have everybody start to undermine what you did or to nitpick it to death.

I fully appreciate that phenomenon and all the work that you all put into this. But when Senator Feinstein said, "Here's what we've done," I knew what the reaction of some colleagues would be, and I suggested to Senator Feinstein that she make several changes. She did. I know some of those were kind of hard for some of you to swallow. But she was extraordinarily constructive in putting this thing together in a way that I could defend it, as a Senator from another State, and I'm happy to do so, and happy to do it again.

So I will continue to work, to the extent that I can, with Senator Feinstein. And I guess what I want you folks in California to know is, please don't be disappointed. I know. I've been through the same thing. I've got a thing going right now myself here that we're going to have a long time to get through. It's very frustrating, it's very time consuming. The process here can be maddening. Don't give up. Keep of good cheer. Be constructive. Keep educating us. That's what we need. And be understanding of the financial issues, and we'll find a way to work around all these problems.

Also, Bennett Raley and all the folks from the Department of the Interior, have been enormously helpful here, too. So there are a lot of good people of goodwill working on this. It's hard. But with good, constructive work, we can try to get this thing through.

And, Senator Feinstein, I commend you, and, Madam Chairman, commend you for holding this hearing.

Senator MURKOWSKI. Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR
FROM NORTH DAKOTA**

Senator DORGAN. Madam Chairman, thank you very much.

Has Congressman Calvert testified yet?

Senator MURKOWSKI. He has not.

Senator DORGAN. All right.

Senator MURKOWSKI. We're still getting through our openings.

Senator DORGAN. Well, I have a major keynote address here that—

[Laughter.]

Senator DORGAN. Let me—you know, I would second all that my colleagues have said about Senator Feinstein. She's worked tire-

lessly on this issue, and I'm happy to help her and work with her. I know this is important to California.

And, you know, I would say that Senator Kyl made a very important point. When you're dealing with water policy, you have to have some patience. I mean, these are difficult projects that require tireless devotion and dedication, and this has proven to be the case with this project. But Senator Feinstein has never given up, and so I think she has the ability to work with the members of this committee in a way to get a satisfactory result. I'm really happy to work with her. I think she makes a complete and effective presentation, and has done the groundwork that's necessary to get legislation through.

Senator Feinstein, thank you for your work. And I, as the ranking member of this subcommittee, look forward to working with you to see if we can't get the results we need.

Senator FEINSTEIN. Thanks, Byron.

Senator MURKOWSKI. Thank you.

And, with that, let's turn to Congressman Calvert. Mr. Calvert is the sponsor of H.R. 2828, which is the Calfed legislation now moving through the House. So we welcome you to the Committee. Thank you for your patience this afternoon as we have made our opening comments.

Welcome.

STATEMENT OF HON. KEN CALVERT, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. CALVERT. Thank you. I appreciate you having me here, Madam Chairman. And thank you, Senator Dorgan and Senator Kyl, Senator Burns, a good friend, Senator Feinstein, as I share my thoughts on California water and the future of all Californians. I certainly appreciate your having this hearing.

And I know that all of our thoughts and prayers are with the people in southern California today who are going through a difficult time. It seems that we have a number of problems in California. A lack of energy and certainly these wildfires aren't helpful. And water is a catastrophe waiting to happen in California, as Senator Feinstein well knows in the hard work that she has shown to resolve California's water issues. But we're running out of time. So I know that patience is important, but this is a very difficult problem.

I certainly want to share my appreciation of Senator Feinstein's valiant strides in introducing her Calfed bill and her efforts to find balanced solutions. As you're aware, Senator, I based the structure of my bill, H.R. 2828, on the purposes and intent of your bill. I believe your efforts today will only strengthen the resolve to pass a Calfed bill this session.

I've been working closely with my subcommittee colleagues and stakeholders, and conducted field hearings in California and hearings here in Washington, to gain an understanding of what is right for California water.

What I've heard, across the board, is that we need storage, as Senator Burns points out, we need efficient conveyance, we need improved water quality, we need more agency accountability, and we need strong communication and coordination. Your efforts here

today provide all members the opportunity to see what is working and what minor improvements to the California water system are needed to assure that more than 35 million people continue to have an adequate and a safe water supply. As Senator Feinstein points out, that population continues to increase.

I also believe that your bill provides other water managers and other States and river basins an opportunity to see a system that is working and, with our legislation, will be a balance to all water users.

Our bills are close. I'm confident that the differences can be resolved. I commit to work with you, Senator, and the distinguished members of this committee and the subcommittee I chair, to work out what few differences we do have so we can get the needed Federal authorization that's been so lacking in the last decade.

You know, in a last point, a lot of the hard work that Bennett Raley and certainly others have put into this, the Quantification Settlement Agreement has been resolved. That's good news. Now the hard work begins. We have a few years, really, to wean ourselves from the Colorado River. And without Calfed, we can't do it. We must have this.

Obviously, desalinization is an important issue, and there are other issues, but unless we can move water from the north to the south in the good times, we're not going to be able to meet the goals that we must meet. And, as you all know, especially from Arizona and Nevada and other States, water is a fungible commodity, and the lack of water has a direct cost on price, and price is certainly something that's very important to farmers, as you know, Senator Burns. And so as the scarcity of water increases, the price of water increases with it.

So, with that, again, I'm thankful for having this opportunity to be here. And if you have any questions, I'd be happy to answer them, though they just called a vote and I have to get back over to the House.

So thank you.

Senator MURKOWSKI. Well, we don't want to keep you from your vote. Let me just ask you very quickly, looking into your crystal ball, what do you figure the prospect of Calfed legislation passing the House is?

Mr. CALVERT. I'm very confident we will pass a bill out of committee soon—soon being when we come back into session—and get a bill on the floor. We came very close last session, and I feel confident that we can get a bill passed. But, you know, it's—this catastrophe that's happened in California the last few days shows that we cannot put off problems. We have to deal with them early on and be proactive in these types of things, and especially water. You can't put off water problems, because when it's upon you, you can't solve it overnight.

Senator MURKOWSKI. Are there questions for Congressman Calvert?

Senator Feinstein.

Senator FEINSTEIN. If I may, I'd like to thank him. I happened to agree with what he said. I believe that if we each get a bill through our respective houses, we'll be able to work out any differences that exist in conference and get the job done in a way that

I think everybody would be proud. There are controversies. We've worked to solve them. So I would be very optimistic, and I want to thank you very much, Ken, for coming over today.

Mr. CALVERT. Well, thank you Senator. I appreciate it.

Senator FEINSTEIN. Thank you.

Mr. CALVERT. I look forward to working with you.

Senator MURKOWSKI. Thank you.

Anything from any other committee members? If not, thank you for your time this afternoon, Congressman.

Mr. CALVERT. Thank you, Madam Chair.

Senator MURKOWSKI. I appreciate it.

I just wanted to note for the record, Senator Domenici was planning on attending the hearing today, but was called away to an Energy and Water Appropriations conference meeting. The chairman has asked that his prepared statements be included in the record. But he did want to have me pass on to you, Senator Feinstein, his commendation for all the hard work that you have been doing on this issue and his desire to continue to work with you as we move forward.

Senator FEINSTEIN. Thank you very much.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR
FROM NEW MEXICO

Madam Chairman, I appreciate you holding this hearing today on S. 1097, the CalFed Bay-Delta authorization legislation.

I would like to commend my colleague, Senator Feinstein, for her efforts to deal with these critical water issues in California. She has been persistent in bringing water management issues to the front of the national agenda. I would also like to thank Senator Feinstein for her willingness to engage in bi-partisan efforts to carry forward the business of the Energy and Natural Resources Committee.

The significant water issues highlighted by this CALFED legislation are not unique to California. For example, we have recently held a hearing on legislation addressing major water issues in Arizona. Other members of the Energy and Natural Resources Committee have equally pressing water resources issues.

My state, New Mexico, struggled through a disastrous summer requiring Herculean efforts by Federal, State and every other water management group. We have now reduced our storage to historic lows and we face potentially traumatic choices this coming year. If anything, New Mexico has fewer resources and is in worse shape than California.

For these reasons, I am developing legislation to address the breadth of water issues faced by my state. For lack of a better name, I have been referring to this legislation as New Mexico FED.

I look forward to working to resolve the remaining issues on S. 1097, and equally important, I look forward to working with Senator Feinstein and my other colleagues on the Committee to address the water issues that face New Mexico and the rest of the Western U.S.

Thank you, Senator Murkowski, for conducting this hearing today.

APPENDAGE

Additionally, I feel that CALFED is increasingly significant in light of the recent historic agreement among the U.S. Department of the Interior, the Colorado Basin States and in particular, the users of Colorado River water in California in an effort to reduce California's dependence on Colorado River Water.

The CalFed program was first initiated almost 10 years ago with the signing of the Bay-Delta accord in 1994. The parties who have worked long and hard in developing and managing the highly integrated and interdependent projects of the CalFed program should be commended. Every Western state, if it has not already done so, should pay close attention and where possible, learn from California's experience in this effort.

The collaborative process leading to the Bay-Delta Record of Decision and this legislation sets the stage for the long-term Federal-State relationship in California and establishes a possible formula for other Western states.

However, I have several concerns, which I hope will be addressed in part at this hearing and which may require that I travel to California to see first hand the programs and facilities represented by this legislation.

While the list of projects and programs addressed in this legislation are extensive, S. 1097 does not solve ALL of California's water resources issues. Since the Committee announced this hearing, I have met with multiple organizations from California who have sought my support for CalFed. My staff and I have also met with other California-based groups who feel their projects should receive equal attention to those included in CalFed. Notably, the current CalFed legislation represents only four years of the Federal-State partnership. Thus, it is important, that the Committee understand what California water issues are resolved by the CalFed legislation and what additional authorization requests the Committee should anticipate for other California water projects.

A major question on S. 1097 is whether new authorities are needed to implement the Federal-State relationship or whether existing authorities are sufficient. This is a key issue in developing Western water policy. I hope that today's hearing and subsequent discussions will help increase my understanding of the Federal government's existing authorities to address complex water issues and lay a foundation for assessing the right course of action on water issues for other states, like New Mexico.

As has been discussed before, every state in the West is facing the same water trauma. Recently, this committee conducted a hearing on water settlements and other projects in Arizona. As many of you know, I am currently in the process of developing broad-reaching water legislation for New Mexico. Thus, the policy and other implications of the CalFed legislation must be viewed in light of these broader Western needs.

Finally, I want to commend my colleague from California, Senator Feinstein, for her hard work on S. 1097. Again, thank you Madam Chairman for taking on these weighty issues.

Senator MURKOWSKI. Let's go to panel No. 2. I'd like to now welcome Assistant Secretary Bennett Raley, who is testifying on behalf of the Administration.

Mr. Raley, thank you for joining us this afternoon.

**STATEMENT OF BENNETT W. RALEY, ASSISTANT SECRETARY
FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR**

Mr. RALEY. Madam Chairman, thank you very much for providing us with the opportunity to address this extraordinarily important issue for the Department of the Interior and, in fact, the United States.

The resources at issue in the State of California are of national importance. It's a nationally important economy, nationally important environmental and other resources. And like the other States, we believe that it is only with the relentless attention and support of all of the people here in this body, as well as the administration, that we'll enable people out on the ground, at the State and local level, to find the tools to resolve what will otherwise be an unending series of catastrophes.

Senator Feinstein spoke, in her opening remarks, of finding this a—if I could use the word—a morass of litigation. And, if I may, I can say it no more plainly than that this administration believes that solutions like CalFed are absolutely critical to avoiding unending series of catastrophes. In fact, you can look at Secretary Norton's Water 2025 Initiative, which the Secretary announced this spring and completed regional hearings on throughout the West this summer, over 3,000 people attended these hearings in the West to talk about common-sense solutions to avoiding, or at least

minimizing, conflict over water. We drew heavily upon Calfed, and the successes and failures in Calfed, in terms of it being an experiment in size and in its scale, as the Secretary developed Water 2025.

We do not want to deal with a future that does not include a Calfed authorization. And I will be blunt, there is virtually nothing that I can disagree with in Senator Feinstein's opening remarks, with the minor exception that we may have different perspectives on the amount of money that is currently available at this time within the President's budget. That's something that I suspect will be discussed within this body, and the executive branch will make its preferences known. But the goals, the objectives, and the relentless search for resolution of tough issues that Senator Feinstein spoke of, we agree with much of what she and all of you have done together.

I also want to thank, on behalf of the Secretary, Senator Feinstein for noting the success of the Secretary, the four water-management agencies, and the seven States on the Colorado River. And we know that that could not have occurred without the support of members of this subcommittee in searching for a long-term durable solution.

There is very much a connection between the long-term success, with respect to the California plan for the Colorado River, and Calfed. As Senator Feinstein, Senator Kyl, Senator Burns, and, I believe, all observed, in one way or another, that if California is to meet its needs from a water-use standpoint, from an environmental standpoint, from a recreational standpoint, for water as its population grows, we must have Calfed, because the only other alternative will be the decimation of agricultural communities that we do not believe should bear disproportionate burdens within California as it struggles to meet the challenges of a population that I saw the other day, L.A. growing something like 800 people per day.

And so, without reservation, we're supportive of the concepts of Calfed. We believe that, with the exception of what I consider to be fairly technical matters that I've noted in my opening statement—which, Madam Chairman, I'd like to request be submitted for the record—that success is attainable. And if I can borrow a term that we used at some risk in the Colorado River negotiations, I do believe that we are achingly close. With the leadership of the Senators of this subcommittee, Mr. Calvert, and Mr. Pombo, in the House, we are achingly close to concluding this chapter in the long story of enabling California to meet the needs of its people and its resources.

With that, Madam Chairman, I'd like to just refer to my written statement and leave whatever time may be available for questions from the Senators.

Senator MURKOWSKI. Thank you, and your written comments will be included as part of the record.

[The prepared statement of Mr. Raley follows:]

PREPARED STATEMENT OF BENNETT W. RALEY, ASSISTANT SECRETARY
FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

INTRODUCTION

Madam Chairman, members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the proposed bill authorizing the Secretary of the Interior to implement the CALFED Bay-Delta Program. S. 1097 provides authorization for the Secretary of the Interior and the heads of the participating Federal agencies to carry out implementation of the CALFED Bay-Delta Program as set forth in the Record of Decision. Furthermore, S. 1097 would authorize funding, as well as governance and management authorities for a comprehensive, balanced, and timely water management program for California.

I would like to express my sincere appreciation to the Committee for your continued support and commitment to making significant progress with the CALFED Program. I also appreciate the concerns demonstrated by this Committee that progress be made and your efforts in developing the bill being considered here before us today. Your continued willingness to work with the Administration and Department on this matter is of real and continuing importance to us. The current bill addresses many of the concerns raised in previous testimony, and we appreciate the approach the Senate is taking to authorize a clean CALFED bill. While we appreciate the effort and commitment that has gone into this bill, this testimony highlights several outstanding concerns that will need to be addressed for the Administration to support this legislation.

OVERVIEW OF PROGRESS ON CALIFORNIA WATER ISSUES

Before addressing S. 1097, I would like to briefly focus on several key California water issues and provide you with an overview of CALFED accomplishments to date. Virtually every Western state has issues of concern and controversy demanding our collective attention. The Department of the Interior has recently initiated Water 2025 which is a commitment to work with states, tribes, local governments, and the public, within existing resources, to address the realities of water supply challenges in the West. Water 2025 recognizes crisis management is not an effective solution for addressing long-term systemic water supply problems. This effort is intended to focus sustained attention on measures that local communities can be put in place to proactively anticipate and mitigate the water conflicts we will otherwise inevitably experience, even in non-drought years. In some areas of the West, communities are already implementing water banks, voluntary transfers between existing users, and water conservation measures to address potential water supply crises in advance.

COLORADO RIVER WATER DELIVERY AGREEMENT

A prime example of crisis prevention is the recent conclusion of decades of controversy with the signing of the Colorado River Water Delivery Agreement. On October 16, 2003, Secretary Norton was joined at Hoover Dam by representatives of the seven Colorado River Basin States and the four California water agencies (Imperial Irrigation District, Coachella Valley Water District, the Metropolitan Water District of Southern California and the San Diego County Water Authority), to celebrate this historic agreement that allows for the largest "ag to urban" transfer in the West. This agreement, forged under the Secretary's leadership resolves important issues that were of significant concern to many in the West and in Congress.

By executing this pact, California will keep its 1929 promise to limit its use of Colorado River water to 4.4 million acre-feet by adopting specific, incremental steps to gradually reduce its use over the next 14 years. This Agreement includes measures that provide water for San Diego and its other growing cities in the southern half of the state, which are dependent on additional water conservation within California's farming communities. Under recently enacted state legislation, California will develop strategies to address the environmental concerns of the Salton Sea.

The California water management agencies have agreed among themselves as to how California's 4.4 million acre-feet will be allocated within the state. Reaching this agreement benefits not only California, but also the seven states in the Colorado River Basin, allowing them to protect their authorized allocations and meet their future water needs.

The key elements of the deal are:

1. Caps previously unquantified water entitlement of the Imperial Irrigation District (IID) and Coachella Valley Water District.

2. Provides for the conservation and transfer of up to 277,700 acre-feet from IID to the San Diego County Water Authority.
3. Resolves longstanding disputes over the beneficial use of Colorado River water.
4. Reinstates the availability of Colorado River surplus water for California and Nevada urban water users, providing for a 14 year gradual reduction to California's allocated share of Colorado River water (a reduction from 5.2 to 4.4 million acre-feet).
5. Provides water and wheeling arrangements for settlement of the San Luis Rey River Indian Tribes.

This is a historic Agreement that settles longstanding disputes regarding the allocation of Colorado River water within California that have been in dispute since 1931. This Agreement provides several immediate and long-term benefits to the beneficiaries of the Colorado River, such as:

1. The fundamental principal of the Law of the Colorado River is upheld in this Agreement: Legal allocations to each state must be respected and enforced. In the past commentators and others within the Basin have suggested that transfers of additional water from the Upper Basin's allocation to California would be the best approach to resolve problems associated with California's overuse of the River. That approach would have been inconsistent with the basic structure and the allocations to each basin as provided in the Colorado River Compact of 1922. The Department does not believe that undermining the certainty of the allocations established over the past century would solve problems within the Basin; rather, such an approach would lead to a prolonged period of uncertainty and instability for all water users within the Basin. As a recent editorial in Utah stated: "By firming up the water-rights issue, California will have to adhere to its fair share of water from the Colorado River."

2. Through this Agreement, California has taken concrete steps to honor the commitment its legislature made in 1929 to live within an allocation of 4.4 MAF from the Colorado River. As a result, reinstatement of the Interim Surplus Guidelines, will once again allow California to have a grace period to reduce its use to 4.4 MAF. This will allow California to better plan and implement water conservation activities in a manner that avoids adverse impacts to its economy.

3. Reduction in water use by California directly reduces demand on water stored in Colorado River reservoirs thereby reducing the risk of future shortages on the River. Arizona, with the most junior priority in the lower Basin, is particularly at risk of future shortages, and we are currently experiencing historic drought in the Basin.

4. This Agreement is a resounding endorsement of the role of the Basin States to collectively fashion new approaches to solve issues within the Basin. The success of this Agreement builds on the Seven Basin States' consensus plan that was ultimately adopted by the Department as the Interim Surplus Guidelines. Secretary Norton chose to live by, and enforce, the deadlines that were agreed to by all seven Basin States. This Agreement honors and respects the agreements and obligations among the states that were incorporated in the Interim Surplus Guidelines.

5. Lastly, bringing Southern California's water use into alignment with its allocation from the Colorado will also help reduce pressures on supplies from Northern California. As we saw earlier this year, the reduction in available Colorado River supplies to MWD lead to additional transfers from Northern California. The agreements reached on quantification of agricultural allocations in the Colorado River Water Delivery Agreement will provide a framework for additional transfers in the future.

President Bush summarized these benefits in his statement of October 16: "this Agreement allows the Colorado River to meet emerging water needs and provides certainty for the people of the Basin States."

CALFED

The CALFED Bay-Delta Program is also an example of crisis prevention. The CALFED Program is a response to the water management and ecosystem problems that came so clearly into focus in the drought of 1987 to 1992 experienced within the Bay-Delta system. Furthermore, the historic and ongoing conflicts between water management for supply and fishery protection have given rise to the urgency of the CALFED Program. For more than 7 years the collaborative State-Federal CALFED Program has been searching for the equilibrium among the Delta's complex problems and stakeholders with divergent interests.

Since Secretary Norton last appeared before the Senate Energy and Natural Resources Committee in July 2001 on the CALFED Program, much has been achieved

in California water issues through the implementation of the CALFED Bay-Delta Program. I have attached to my statement a description of the accomplishments the program has achieved in years one through three. A collective investment of approximately \$1.925 billion has been made in Years 1 through 3 from numerous Federal, state and local funding sources which has attributed to a vast array of project accomplishments in the program areas of water supply reliability, drinking water quality, levees, ecosystem restoration, watershed, science and oversight and coordination. Of the \$1.925 billion, \$1,204 million was state funding, \$491 million was local funding and \$230 million was Federal funding. The Federal investment for all directly related and overlapping programs and projects that contribute to achieving the CALFED ROD objectives within and overlapping the geographic solution area is a total of \$600 million.

RECENT CALFED DEVELOPMENTS

State Established California Bay-Delta Authority

The California Bay-Delta Authority (CBDA) was established by State legislation enacted in 2002 to provide a permanent State governance structure for the collaborative State-Federal effort that began in 1994. Pursuant to that legislation which was effective January 1, 2003, the CBDA formally assumed responsibility for overseeing State implementation of the CALFED Bay-Delta Program. The legislation calls for the CBDA to sunset on January 1, 2006, unless Federal legislation has been enacted authorizing the participation of appropriate Federal agencies in the CBDA. Currently Federal agencies are participating with the CBDA and have engaged with their State CALFED partner agencies in the first two meetings.

Interior and other Federal agencies involved with CALFED are discussing among themselves and with CBDA how our interaction with this new entity will evolve. As this is a unique intergovernmental arrangement, there are no prototypes to examine and from which to learn. We are proceeding cautiously in our examination of the many legal and institutional issues that have been identified.

Renewed Agreements

The California Bay-Delta Public Advisory Committee Charter was renewed in August under the Federal Advisory Committee Act. The renewal of the Charter allows the Committee to continue to provide recommendations to the Secretary of the Interior, the Governor of California, and the 24 Federal and State CALFED cooperating agencies on Program implementation of the CALFED Bay-Delta Program. Our participation under the MOU has advanced the Program's implementation through the coordinated planning, scheduling, and budgeting for programs and projects.

Establishment of D.C. Level Federal-Agency Coordination Working Group

The Department of the Interior as the lead Federal Agency for CALFED Program implementation has established a Washington-Level Working Group consisting of a representative liaison from each of the 11 Federal participating agencies. This group will meet on a regular basis to facilitate coordinated support at the Washington level for each of the participating agencies. The group will focus on providing the higher level support and coordination needed by the 11 Federal agencies for Program implementation.

Napa Proposition

The Napa Proposition is a process to develop feasible plans to implement key actions contained in the CALFED ROD. The primary objective of the initial Napa discussions was to develop a proposal for the integration of the State Water Project (SWP) and the Federal Central Valley Project (CVP) in a manner that is consistent with the spirit and intent of the CALFED ROD. The proposition was developed during meetings that were a continuation of an ongoing relationship between the project agencies and their contractors to ensure better coordination of the day-to-day operations of both projects.

The proposition is expected to increase moderately supplies for both projects. By better managing risk, it will allow higher allocations earlier in the year, increasing certainty for both CVP and SWP contractors. Most importantly, the proposition sets the stage for implementation of key CALFED programs, including increasing pumping capacity at the SWP Banks Pumping Plant to 8,500 cfs and continuation of the Environmental Water Account. It also recognizes the fundamental CALFED objective of improving Delta water quality.

I would emphasize that the Napa Proposition is only a recommendation at this time and that no final decisions have been made. This recommendation will be considered through a more formal decision-making process described in the CALFED ROD, including various stakeholders and public review activities.

Integration of Water Planning—CA Water Plan Update, Water 2025 and Bay-Delta Program

The State has just issued a Draft Update of the California Water Plan which proposes a set of water resource actions to meet future water needs. One central theme that is consistent across the Water Plan, Water 2025, and the Bay-Delta Program is the need to pursue regional and local water development as a critical element to help determine priorities and demand. All three programs call for coordinated and integrated planning for determining future projects, approaches, or strategies for addressing future water needs. With respect to Water 2025, Secretary Norton has stated that the CALFED Program is a perfect example of how agencies and stakeholders can effectively work together towards a common goal.

Re-evaluation of Program Budgets & Targets

Since the signing the Bay-Delta Programmatic ROD in 2000, financial conditions have changed, and the implementing Federal and State agencies, as well as Bay-Delta Public Advisory Committee and the CBDA, have concluded that it is time to reassess and develop a strategic plan for the near-term implementation of the Program. The CBDA recently directed its staff to reassess the Program which will include a review of the targets and budgets necessary to meet Program goals specified in the ROD. The reassessment will make recommendations on replacing original monetary targets with performance-oriented targets as they are developed. Careful consideration will also be given to Program implementation that can be fully funded in the current fiscal climate; program implementation must be firmly based upon realistic expectations regarding actual appropriations. Failure to develop affordable CALFED Program components may jeopardize the progress of a balanced CALFED Program.

A CALFED Finance Plan is being developed to enable the Program to continue implementation in a balanced manner. The Draft Finance Options Report will develop finance options for each of the CALFED Program elements based on an evaluation of benefits, beneficiaries, and costs. A Final Finance Options Report will propose a final set of finance options, including the institutional structure to implement a finance plan. An Independent Review Panel (8 nationally recognized experts) has been established to review and comment on each of these reports.

Let me now turn to the legislation before us. In order to support the Federal component of the reevaluated Program, it is important that appropriate legislation be enacted to authorize Federal Government participation.

FEINSTEIN LEGISLATION

This legislation represents a comprehensive approach to water issues in California. The bill proposes the commitments made in the 2000 Record of Decision as the road map for implementation of the CALFED Bay-Delta Program and respects past agreements Californians have made by representing compromise language negotiated at great length.

In general, however, the bill addresses a larger authorization package than may be required by the 11 Federal agencies to implement and participate in the Record of Decision actions. Our Federal agencies have been able to rely on over fifty existing authorities (passed by Congress) that continue to enable Federal agency participation. We are submitting for the record a detailed matrix of those existing authorities. The key areas in which additional authorization is necessary are as follows:

Environmental Water Account (EWA)—While the bill provides authority and participation for EWA program activities for the period years 4-7, we believe that the bill should authorize implementation of a long-term EWA in a fashion that supports the vision and flexibility envisioned in the ROD. The establishment and successful operation of a long-term EWA will be one of the most significant accomplishments of CALFED in reducing the conflicts between fisheries and water project operators.

Levee Stability Program—The goal of the Levee System Integrity Program is to provide long-term protection for multiple Delta resources by maintaining and improving the integrity of the extensive Delta levees system. Authorization for feasibility study for risk assessment strategy, Delta Emergency management plan, dredged material reuse on Delta Islands, and best management practices to control and reverse land subsidence is needed as noted in the ROD.

Implement Conveyance Program Elements—Authorization is needed for feasibility studies for the increased pumping to 10,300 cfs at H. O. Banks Pumping Plant, fish screen and intake at Clifton Court, and San Luis Reservoir Low Point Project.

Ecosystem Restoration Program Financial Assistance—Authorization is needed to carry out the Ecosystem Restoration Program activities through the use of grants and cooperative agreements with non-Federal entities

Cross-Cut Appropriation—Finally, Interior supports the concept of a cross-cut appropriation as delineated in the proposed bill which we believe will reduce inefficiencies and further improve Federal agency participation and recognition of implementation requirements. A cross-cut appropriation would more accurately reflect the contributions of the participating Federal agencies and lessen the risk to other Reclamation funded programs and projects in the Western states.

Additional Concerns—The Administration has several specific concerns with the proposed legislation.

- As mentioned, appropriations are unlikely to approach the \$880 million envisioned for Stage 1. Balanced progress in the program can only be achieved with a realistic expectation of CALFED appropriations.
- Section 3 (C, iii): While the Administration supports improvements in Water Use Efficiency, this section references two studies that the Administration has not yet cleared. We cannot support legislation that codifies any studies that have not finished Administration review. Similarly, § 3(C, iii, II) directs the Secretary to review any seawater desalination and regional brine line feasibility studies, regardless of the lack of prior Department involvement in those studies. Such studies are generally not conducted with the best interests of the taxpayer in mind, and should under no circumstances be adopted by either the Administration or Congress without being subjected to the same scrutiny that applies to federally-sponsored studies.
- The legislation presumes authorization of storage projects that are only now in the early phases of feasibility studies; if those projects are not pursued beyond the feasibility study stage, for whatever reason, it could indicate that CALFED implementation is out of balance; however, the legislation offers no alternate path for getting implementation back in balance. CALFED should identify alternate paths for achieving the outcomes of the storage component (as well as other components) of the program.
- The Administration is concerned that the bill gives blanket authorization to projects that have not undergone the normal process of Executive Branch review. Completing this review process for all federal projects is crucial to ensure that the projects are in the national interest and appropriately address the problems facing the Bay Delta.
- Section 5 (e) and Section 6 (a) duplicate one another to a large extent; reporting requirements could be integrated and streamlined by requiring a single budget crosscut.
- Section 6 (a): There are Constitutional concerns regarding this section; Congress cannot direct what the President includes in his budget requests. The Department of Justice has provided alternate language that we plan to share with the Committee.

CONCLUSION

The CALFED Program is truly at a critical juncture. After years of planning, the Program is now moving into the strategic implementation of key program and project activities. This forward momentum has been invigorated recently by the resolution of California's use of Colorado River water, the Napa Proposition's recommendations on coordinated operations of the CVP and SWP, and the implementing CALFED agencies' commitments to re-evaluate the CALFED Program. I strongly believe that re-evaluation of the Program with a focus on developing affordable component actions that create a durable and balanced solution to continuous improvement in water supply, water quality and the environment will best serve the interests of all Californians. These objectives are within our reach.

The Administration is encouraged by the accomplishments to date under the CALFED Program. Your support of the CALFED Program through enactment of pertinent authorizing legislation and associated funding for the participating Federal agencies is fundamental to continuing Federal implementation efforts under the Program. Through Federal, State, and public collaborative implementing efforts, progress has been made in improving water supply reliability and the ecological health of the Bay-Delta Estuary. By working together, we are putting programs into action that I believe will lead to the realization of the long term benefits and expectations of the CALFED Program.

This concludes my testimony. Madam Chairman, I would like to reiterate my appreciation to the Subcommittee and others for continuing to work with the Administration to address the significant water issues facing California. I would be happy to answer any questions.

Attachments:*

1. CALFED Accomplishments for Years 1 through 3
2. CALFED Bay-Delta Program Federal Authorities for ROD and Related Activities

Senator MURKOWSKI. You have suggested that perhaps the \$880 million authorization in S. 1097 is not a realistic expectation. If, in fact, you do not consider that to be a realistic expectation of the Calfed appropriations, what would you consider to be an amount that is realistic?

Mr. RALEY. A fair question, Senator, and I do not have an answer for that. We are just highlighting that, in light of budget pressures that Senator Kyl referenced, that—and without necessarily in any way disagreeing with Senator Feinstein’s accounting of the history of how this has been pared back and pared back, it may not be that the full \$880 million is available.

Our goal is to make the most appropriate and efficient use to achieve the principles that were articulated by Senator Feinstein of the Calfed balance and integration at the local level, et cetera, with whatever resources are available. We want Calfed to be scalable—in other words, that it moves forward in a meaningful and productive path with whatever resources are made available as a part of the budgeting process. But I’m sorry, Madam Chairman, I do not have a number to provide to you.

Senator MURKOWSKI. I guess I probably would have been surprised if you had, but I needed to ask the question.

Mr. RALEY. Thank you.

Senator MURKOWSKI. In your written comments, you discussed the authority that the Federal Government already has to undertake Calfed Program activities. Could you explain what they already have and, in your opinion, what authorities the Federal Government lacks.

Mr. RALEY. Well, as I recall, we rely on some 50, approximately, acts of Congress that—to support or authorize various aspects of the activities that are within Calfed, writ large, which includes both category A and category B expenditures.

We believe that there are four areas for which additional authority would be appropriate. And so that I do not mistake them, if you’ll allow me to turn to find those four in my testimony—

They are: additional authority with respect to a long-term environmental water account, additional authority with respect to levy stabilization efforts, additional authority for conveyance project feasibility studies, and ecosystem system restoration grant-making. Those are four areas where we believe existing authorities are not adequate to support what is clearly going to be a part—or needed as a part of Calfed, moving forward. By listing those, we are not in any way implying that—a lack of support for the Calfed authorization that is the focus of Senator Feinstein and Senator Boxer’s bill in this body, and Congressman Calvert and his colleagues over in the House.

We would far prefer that there be the programmatic authorization for Calfed that Senator Feinstein and her colleagues have been working on for so long, because it will provide the unity, if you will,

* Retained in subcommittee files.

the cohesiveness, the crosscut budget, and many other advantages to reaching success that we simply won't have if we are forced to move forward, as we have over the last three years, on a piecemeal basis, reaching and pulling from I think it's 50 different authorities.

Senator MURKOWSKI. How much is currently being spent on activities that could be identified as consistent with the program components that are identified through the Calfed legislation?

Mr. RALEY. Madam Chairman, I believe it's slightly under \$2 billion over years one through three. I recognize the bulk of that came from State and local sources, and that, as I recall, the Federal contributions over those 3 years is something like \$230 million. Now, within categories A and B of Calfed expenditures, there are expenditures that virtually everyone agrees move forward on the Calfed objectives. There are others in category B that have greater or lesser degrees of direct relevance to the principles of Calfed, so it's difficult, in light of the significant scope of Federal activities in California, to draw the line at a precise place. So our assessment was, where it's been, over years one through three, under \$2 billion, and \$230 million of that being Federal.

Senator MURKOWSKI. And then one last question. Again, in your written comments, you note that the legislation presumes authorization of storage projects that may not be authorized after additional studies are completed. And you state in the testimony, that, "Calfed should identify alternative paths—alternate paths for achieving the outcomes of the storage component of the program." So do you have any suggestions as to how the storage component of the program can best be achieved?

Mr. RALEY. The Secretary believes that the storage component of the program can best be achieved by pursuing the path that Senator Feinstein, Senator Burns, Senator Kyl, and all of you have talked about. We are very supportive of that. The reference in my testimony is a recognition of the reality that as projects go through the NEPA process, we will have to look at all alternatives for achieving a particular goal. And, you know, we can't be predecisional, in terms of which one we might implement.

On the other hand, the Secretary has joined with Senator Feinstein and others, and applauds her for recognizing that with the explosive population growth in California, unless other important sectors—whether it be agriculture, the environment, others—are, sort of, thrown overboard, which is not good public policy and not going to happen, the pie will have to be expanded.

Senator MURKOWSKI. Thank you. I appreciate your answers.

We'll next move to Senator Feinstein. For the information of those present, we have been called to a vote on an amendment, and I understand that they're cutting us off at 20 minutes, so you'll be seeing us coming and going throughout this hearing.

So, Senator Feinstein, if you would care to ask your questions?

Senator FEINSTEIN [presiding]. Thank you very much.

Let me thank you for your testimony, Mr. Raley. Your comments on storage surprised me a little bit, because there's no way of knowing about a storage project until you do the feasibility studies on it. And I guess the four connected—Raising Shasta, Los Vaqueros, for water quality, the Upper San Joaquin, and Sites.

Now, some of those probably will be more positive than others, but you can't tell without doing the feasibility. Are you saying that we should not proceed to do those feasibility studies?

Mr. RALEY. No. I apologize if that's the inference. That was not the intent. We just simply were looking to, ultimately, the selection of what alternatives would be implemented. We are very supportive of the approach that you've adopted, in terms of proceeding with feasibility analyses for storage.

Senator FEINSTEIN. See, I mean, this always remains an area of controversy, but, I mean, I've lived in California all my life. I've seen its growth. And, you look at how people use water, and you see very practical things. And, you know, I'm one that believes in conservation. It's kind of interesting, in some respects there is more conservation in the North than there is in the South in a lot of areas. You know, there are dry lawns, people don't water, everything is conserved, et cetera. But I've become convinced that you really can't solve the problem unless you're better able to take water from the wet years and hold it for the dry years, because nothing we do, if the planet is getting warmer, is really going to remove that need for storing water. And I'd be very happy to, you know, sit down and work that out with you.

I also think, you know, clearly you've sent us a message from OMB, and OMB has said, I guess, that \$880 million is unlikely to be available over the next 4 years. So then the question becomes, What do we do about it? Do we lengthen the years? Do we cut the gross amount? And based on what? And I mentioned this very briefly to Mr. Wright, who's sitting directly behind you. And I would hope that within the next couple of weeks you might get together with him and might come up with a program that is fundable, that the administration is willing to make a commitment to.

The reason I say this is because, you might guess, from my perspective there's some degree of frustration. You know, I've tried to listen to everybody, I've tried to take what they have into consideration, just keep changing and changing. And we've got to get momentum. We've got to move this bill.

Mr. RALEY. Senator, I understand your frustration and think you're being quite gentle in expressing it. We will work together with all stakeholders in California. I can assure you that within the administration there is serious attention given to this legislation, as well as its counterparts in the House. And I do believe, without being able to predict what the number is, all the issues are resolvable. We are achingly close to—to borrow the term from the Colorado River fights about 3 months ago, achingly close to success, and we want to get there.

Senator FEINSTEIN. Well, let me ask you this last question, and then I've got to recess the committee and go and vote. Give me a length of time that we can solve these questions—in weeks, not months—because then I'm going to hold you to it.

Mr. RALEY. That's why I'm taking my time in answering.

[Laughter.]

Mr. RALEY. Could I complete that answer upon your return from voting?

Senator FEINSTEIN. Yes, you may.

Mr. RALEY. Okay, thank you.

Senator FEINSTEIN. Thank you.

And we'll recess the committee for the time being. Thank you.

[Recess.]

Senator MURKOWSKI [presiding]. We're back on the record. And before we were interrupted by that vote, I believe, Senator Feinstein, you were asking Mr. Raley some questions. And if you wanted to complete your round of questioning, that would be appropriate at this time.

Senator FEINSTEIN. Thank you, Madam Chairman.

Mr. Raley is going to come forth with pearls of wisdom as to when we might be able to have an answer with respect to a commitment from the administration on funding, how much, over what period of years.

Mr. RALEY. Senator, I hoped that you had been distracted by other matters in the vote and would not remember the question that was posed.

[Laughter.]

Mr. RALEY. But I didn't expect that to be the case. I cannot give you a number today. That is above my pay grade, and I don't want to pretend. In talking to Patrick Wright, I believe that the Calfed process can go back and come up with numbers that Calfed, and particularly the Calfed Bay-Delta Authority, the State agency, believe are appropriate for funding amounts in the, sort of, near to medium term.

What I can do, in terms of commitments, Senator, with respect to working out the issues, is commit that on the substantive issues, we will meet with your staff—and I know them to be reasonable, and I mean that—meet with your staff as soon as you wish, and we will meet with them until we either resolve things or distill down the issues to ones that we cannot, at our level, resolve. I'll commit to doing that, you know, starting next week.

Senator FEINSTEIN. I think that would be excellent. We'll take you up on it.

Mr. RALEY. All right.

Senator FEINSTEIN. And let me quickly ask one other question. The recycling projects, the studies that Interior has been sitting on—your eyes are closed—and then saying that you cannot move forward on them? Why can you not move forward on them?

Mr. RALEY. Senator, you're again being gentle. The reason my eyes were closed is that I had thought that I was through being embarrassed about one in particular of those studies. The study on recycling in southern California—I take responsibility. The reason I'm looking pained is that I told Congressman Napolitano, several weeks ago, that I thought that that had been mailed out to the people that had paid for it so that they could review the current draft. I later found out that I was wrong, that because the people who were working on that had been pulled off to another issue, it hadn't actually gone out, and I've been remiss in not calling Congressman Napolitano to tell her that it hadn't gone out.

But I will go back and find out if it's gone out today. And if it hasn't gone out, I will personally commit to you that it will go out by close of business Friday in whatever form it's in.

The delay for the last 2 years on that study is my responsibility. The version that I saw was—the study was gibberish. The executive summary was 30 pages. It was not until something like page 28 that there were cost-per-acre-foot numbers. I could not tell, from reading the executive summary, exactly the message they were trying to communicate to the administration or to members of Congress.

My charge was, go back—if we're talking about the same study, Senator—write it in English, take out the internally inconsistent matters, do not touch the analysis, but write it in English and strip out the gibberish. It's been done. It's been sidelined at various times, because some of the people working at it are people who have been working on Colorado River and other things, and it will go out to the people that paid for it by Friday, regardless of the form it's in. There has been no intent to sit on that study, other than my personal insistence that it speak in English, and that's why I'm deeply pained by this.

Senator FEINSTEIN. So you were not, then, precluding recycling projects from being part of this.

Mr. RALEY. Of Calfed?

Senator FEINSTEIN. Yes.

Mr. RALEY. No.

Senator FEINSTEIN. Okay.

Mr. RALEY. No. We have separate issues with respect to the Bureau of Reclamation's budget. And our overall perspective has been that while title 16 is a very important program, and every single one of its various components can, in the right place at the right time, be material additions to water supply needs, we wish to have the Bureau of Reclamation focus on desalinization, including seawater and brackish water desalinization, so that we do not try to be all things to all people. Simply put, the Bureau of Reclamation is not the appropriate entity to be the lead, at a Federal level, on wastewater treatment capabilities.

Senator FEINSTEIN. Now, in addition to recycling, are there any other projects which we have not—that you're concerned about?

Mr. RALEY. Within the Calfed ROD?

Senator FEINSTEIN. You say that the administration is concerned that the bill gives blanket authorization to projects that have not undergone the normal process of executive-branch review. And I'm trying to get at what you're referring to.

Mr. RALEY. Senator, I'd characterize that as a continued expression by the executive branch of its need to look at projects on a case-specific basis. I recognize up front, Senator, that that desire is in somewhat—there's a tension between that and the desire to move forward on a programmatic basis to deal with a balanced Calfed. And we will work through that tension to find success.

Senator FEINSTEIN. Is that aimed because the environment—there's a certain environmental authorization? Is that what you're aiming at?

Mr. RALEY. No, Senator, that is the—at a more substantive, sort of, level, that is executive branch wanting to be able to look at specific projects and—as a conceptual or a policy matter.

Senator FEINSTEIN. Well, you know—

Mr. RALEY. Do not read more into that than—

Senator FEINSTEIN [continuing]. My view of this is that you should have that right. I don't have a problem with it. The thing that I have a problem with is the holding everything up. You know, I think we ought to work together so that those reviews take place. I don't want to fund projects that are not valid and cost-effective projects. There's just too much that has to be done.

Mr. RALEY. Right.

Senator FEINSTEIN. So I don't think that should be an impediment, because we want to cooperate.

Mr. RALEY. We know you do, Senator. And, actually, we share the same goals. And that's an issue that I am quite comfortable, I'm certain, can be resolved in the context of your legislation.

Senator FEINSTEIN. Right. And there are some projects where you may want to say, "If the State wants to fund that, that's up to us, but we don't feel we should be a part of it." And originally when we started this process, there were some projects that I saw Calfed was doing, and I didn't think we wanted to be a part of them either. But I think we've shaken some of that out. And, I mean, if there is more of that, then we need to take care of it.

Mr. RALEY. Senator, I'd characterize it more as the inherent tension as we try to move from the traditional Bureau of Reclamation history of project-by-project-by-project authorizations to a broader approach of Calfed and a crosscut budget. That shift—I mean, if you compare, for example, the WRDA process—and I'm not saying that Bureau should go to that. I'm just saying the shift from a project-specific history of authorizations to something like Calfed takes time, and there are some steps in between as we move in that direction. That's what that language referred to.

Senator FEINSTEIN. Okay. Thanks, Mr. Raley.

Mr. RALEY. Thank you, Senator.

Senator FEINSTEIN. Thanks, Madam Chairman.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Raley, for the time that you've spent with this committee.

Mr. RALEY. It's a pleasure. Thank you.

Senator MURKOWSKI. We'd next like to invite to the table the following witnesses—this is the stakeholder panel. Mr. Patrick Wright, the director of the California Bay-Delta Authority, Mr. Ron Gastelum, the CEO of the Metropolitan Water District, Mr. Tom Birmingham, general manager for the Westlands Water District, Mr. Tom Graff, regional director, Environmental Defense, Ms. Sunne McPeak, the CEO of San Francisco Bay Area Council, and Mr. David Guy, the executive director of the Northern California Water Association.

Thank you all for being here today. I know that you all certainly live with the realities of this program, and the committee thanks you for your insight and your contributions here. Also, I appreciate the travel that you have taken to join us this afternoon.

Senator FEINSTEIN. Madam Chairman, would you allow me just one minute.

Sunne McPeak and I were supervisors together way back when, and it's just great to have her here. And the San Francisco Bay Area Council is really a very prestigious group of businesses and major community leaders. And I must say that, as a public official,

she was one of the most impressive I have ever met, and so it is just wonderful to have her back here in this new capacity, which isn't new to her now, but the years have passed for both of us, Sunne.

Ms. MCPEAK. Thank you. Thank you, Senator.

Senator MURKOWSKI. Thank you. Well, with that, if we can begin with you, Mr. Wright.

**STATEMENT OF PATRICK WRIGHT, DIRECTOR,
CALIFORNIA BAY-DELTA AUTHORITY, SACRAMENTO, CA**

Mr. WRIGHT. Thank you, Madam Chairman and members of the subcommittee, for the opportunity to appear before you this afternoon.

Today, I'd like to provide just a brief overview of the Bay-Delta Program's major accomplishments, with a special emphasis on some of the key events that have taken place during the last year. But first, of course, I, too, want to especially express my appreciation for the leadership and the persistence of your colleague, Senator Feinstein.

Together with Congressman Ken Calvert, on the House side, she has been the strongest champion of this unprecedented collaborative effort. And, in fact, we have made tremendous progress since the State and Federal agencies came together in the summer of 2000 with the Senator's help to a collaborative, balanced, comprehensive plan to meet the goals of the program.

In the first 3 years of the program, we have coordinated the expenditures of over \$2 billion in Federal, State, and local funds to meet the program's goals. We've significantly improved the level of coordination among the nearly two dozen agencies involved in the program. We have largely eliminated the major conflicts that have occurred over Delta operations, which previously led to annual shutdowns of the pumping plants. And we have launched an independent science program which conducts workshops and independent reviews of all the program elements.

Now, I'd be one of the first people to say that one of our challenges is describing the benefits of the program, since they are not always highly visible. It's difficult sometimes to measure the benefits and the value of agency coordination in avoiding crises, and memories tend to be short about how bad those crises were in the early 1990's.

And we aren't just talking about a handful of highly visible water-supply projects, we're talking about an investment in the last 3 years of a billion dollars in water-supply projects to local communities throughout the State to help them better meet their most pressing water needs and, just as important, to reduce their dependence on the Delta and the Colorado River.

On the ecosystem side, as well, we're not talking about a handful of projects that have the kind of visibility of some of Senator Feinstein's other efforts, like headwaters or the desert or Tahoe. We're dealing, again, with hundreds of ecosystem restoration projects to try to protect the largest estuary on the west coast of the Americas.

Sometimes it's difficult to characterize that, because it's a sum total of a lot of small projects. But, believe me, the payoff is just

as large and just as important for the State's economy and environment.

The program is likely to become more visible this coming year as we move forward with a package of actions to improve the flexibility of the State's water system, including expanding the capability of the State water project to pump more water, a new and larger environmental water account to protect fish and wildlife, and other measures to improve water quality and protect local diverters.

Now, of course, there continues to be some skepticism out there that the agencies can pull this off, that the conflicts among competing users in California are simply too great to overcome. But I think our growing track record suggests otherwise. There is simply no question that we are—that water supplies are significantly more reliable today than they were three years ago, and there is no question that we have reversed the decades-long decline in fish populations. One species has already been de-listed, and others are clearly on the rebound.

And, finally, let me assure you that there's no place in the country where so many agencies are working more closely together, and no place where more funds are being devoted to science to guide our decision-making.

At last year's hearing, I outlined our top three priorities to keep this collaborative effort going. The first was to establish a new governance structure to oversee implementation of the program and to provide better oversight and accountability. The second was to secure passage of a State water bond, Proposition 50, to provide the State's share of funding. And the third was congressional authorization for the Federal agencies to fully participate in the program.

I'm very pleased to report that we now have a governance structure in place and a source of State funding to carry us through the next 3 years. What remains to be accomplished is the third objective, a bill to authorize Federal partnership and full participation in the program. That is the only way to ensure that the Federal agencies remain highly committed to the program and to maintain a strong State/Federal partnership, rather than being left with a State effort with limited Federal coordination and oversight.

Simply put, a strong State/Federal partnership is essential to move forward in building upon our accomplishments to date.

Thank you, again, for hearing my comments.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF PATRICK WRIGHT, DIRECTOR,
CALIFORNIA BAY-DELTA AUTHORITY, SACRAMENTO, CA

Chairwoman Murkowski and members of the Subcommittee on Water and Power, thank you for the opportunity to appear before you this afternoon. Today I would like to provide a brief overview of the Bay-Delta Program's major accomplishments, with an emphasis on the events since I last testified before the Subcommittee.

But first, I want especially to express my appreciation for the leadership and persistence of your colleague Senator Dianne Feinstein. Together with Congressman Ken Calvert on the House side, she has been a strong champion of this unprecedented effort to implement a long-term comprehensive plan to address ecological health and water supply reliability problems in the Bay-Delta.

The California Bay-Delta Program is unique in its collaborative and non-regulatory approach to solving water and ecosystem problems. A partnership of state and federal agencies and stakeholders, it addresses four resource management

issues concurrently and in a balanced fashion: water supply reliability, water quality, ecosystem restoration, and levee system integrity.

The issues in the Delta have broad effects statewide, and even throughout the West. The Bay-Delta system:

- Provides drinking water to 22 million people
- Supports a trillion dollar economy, including a \$27 billion agricultural industry
- Forms of the hub of the largest estuary on the west coast and is home to 750 plant and animal species and supports 80 percent of the State's commercial salmon fisheries.

We have made much progress since August 2000, when State and Federal CALFED agencies signed the Record of Decision (ROD), formally approving a long-term plan for the Delta. In its first three years, the Program has:

- Coordinated the expenditures of over \$2 billion in federal, state, and local funds to meet the Program's goals;
- Significantly improved the level of coordination among the nearly two dozen agencies that are involved in the program;
- Largely eliminated major conflicts over Delta operations, which previously led to annual shutdowns of the pumping plants, through the development of the Environmental Water Account; and
- Launched an Independent Science Program, which conducts workshops and independent reviews of all program elements.

At last year's hearing, I outlined our three top priorities for the coming year:

- Establishing a new governance structure to oversee implementation of the program;
- Securing passage of the state water bond, Proposition 50, to provide the state's share of funding for the program; and
- Congressional authorization for the federal agencies to fully participate in the program.

I am pleased to report to you that we now have a governance structure in place and a source of state funding to carry us through the next three years. What remains to be accomplished is the third objective: a bill to authorize federal partnership and full participation in the Program.

CALIFORNIA BAY-DELTA AUTHORITY ACT OF 2003

The California Bay-Delta Authority (Authority), established by California legislation enacted in 2002 (California Bay-Delta Authority Act), provides a permanent governance structure for the collaborative State-Federal effort that began in 1994. The Authority is charged specifically with ensuring balanced implementation of the Program, providing accountability to the Legislature, Congress and the public, and ensuring the use of sound science across all Program areas.

The Authority is composed of representatives from six State agencies and six Federal agencies, five public members from the Program's five regions, two at-large public members, a representative from the Bay-Delta Public Advisory Committee, and four ex officio members who are the chairs and vice-chairs of the California Senate and Assembly water committees. At present, lacking specific authorization to be full participants, the federal members engage in discussions but do not vote. In addition, the legislation establishing the Authority contains a sunset clause that will eliminate the program unless a federal authorization bill is passed by 2006.

CALIFORNIA VOTERS PASS PROPOSITION 50

In November 2002, California voters passed a \$3.4 billion bond measure known as Prop. 50, which provides funding for water quality and local water supply projects, coastal land protection and acquisition, and for activities directly and indirectly related to the Bay-Delta Program.

In all, the \$825 million in direct funding and roughly 2 billion in funding for Bay-Delta related programs and projects means that the Program is on solid financial footing through FY 2006.

FEDERAL AUTHORIZATION

The Federal agencies have also contributed significantly to the program. In the first three years, we have coordinated the expenditures of approximately \$150 million, primarily from the Department of Interior, on programs and projects that directly contribute to the goals of the Bay-Delta Program.

We've also worked with the federal agencies to better clarify the elements of the Program that either already have—or still need—Federal authorization. We have concluded that nearly all of the specific projects in the Record of Decision are authorized under existing statutes, including the Reclamation Act, the Central Valley Project Improvement Act, and the Clean Water Act, but that federal legislation is needed to authorize federal involvement in our efforts to better coordinate these programs with state and local programs to address the state's water supply, water quality, and ecosystem restoration needs.

In summary, with a governance structure and state funding in place, our primary goal now is to secure federal authorization and funding for the program. That is the only way we can continue to have a strong state/federal partnership, rather than a state effort with limited federal oversight.

Thank you again for hearing my comments.

Senator MURKOWSKI. Thank you, Mr. Wright. I appreciate your testimony.

Ms. McPeak.

**STATEMENT OF SUNNE WRIGHT McPEAK, PRESIDENT AND
CEO, BAY AREA COUNCIL, SAN FRANCISCO, CA**

Ms. McPEAK. Thank you, Chairman Murkowski and Senator Feinstein. It is, indeed, a pleasure to be invited here to share the perspective of the employer community.

You have my written testimony. Let me just briefly summarize our perspective.

I do work for the Bay Area Council, which is about 270 major employers in the San Jose/San Francisco/Oakland Bay Area. We also work with a coalition of employer organizations throughout California. And as Senator Feinstein introduced this bill today, she referenced the usual stakeholders that participate in water—water agencies in the urban areas, Ag, and environmental community.

A couple of decades ago, the Bay Area Council and employers in California became engaged. And I dare say that that's a very positive force in the dynamic of trying to reach consensus. For me, I have spent, personally, 30 years in California water policy. And your opening statement about Mark Twain's humorous observation of California's history around water is true—up until the time that the Calfed record of decision was signed.

Now, we're still going to drink whiskey, and hopefully we'll do that in celebration. But the reason I'm here today is because we have the opportunity to set behind us the water wars and to go forward with environmental restoration and stability for economic recovery. The employer community in the Bay Area and California look to Congress and your action in the Senate to be a signal for, "Can we actually have stability in our infrastructure?"

We participated in the Calfed process. I served for 5 years as co-chair of the Citizens Bay-Delta Advisory Committee that recommended the record of decision. After 30 years, you get some perspective. We have survived changes in administration, both in Sacramento and in Washington. That speaks well. I was very enheartened to see that our new Governor-elect has already become active in supporting the adoption of Calfed as a Federal commitment, going forward.

I want to just underscore why we think it's important that there be action on this bill. Even though there exists authorization for some of the Federal agencies to participate, if there is not the affirmation, the recommitment, the signal from the Congress and the

Federal administration to be a full partner in Calfed, there may be questions, there may not be as much enthusiasm, there may not be as much energy committed to the implementation of the programs. Furthermore, what Senator Feinstein has referenced as a balanced package we want to underscore as being essential as integrated set of actions that, unless they are fully carried out, all components of Calfed, we will not have enough water for either the environment or the economy.

So we come here today in support of you, Senator Feinstein, and your leadership. When you pulled everybody together in the early 1990's, and we finally got the accord and then moved on to Calfed, the business community welcomed that. We have unified north, south, east, west, which is not easy to do in the State of California. And we greatly appreciate, Madam Chair, your hearing us out, and we are enheartened by hearing the testimony heretofore that has the prospect of that momentum, so that we can, in fact, move ahead on a reasonable, reliable water policy for the State of California.

[The prepared statement of Ms. McPeak follows:]

PREPARED STATEMENT OF SUNNE WRIGHT McPEAK, PRESIDENT AND CEO,
BAY AREA COUNCIL, SAN FRANCISCO, CA

The Bay Area Council is a business-sponsored, CEO-led, public-policy organization founded in 1945 to promote economic prosperity and quality of life in the region. The Bay Area region encompasses the nine counties that rim San Francisco Bay and their 101 cities, including Oakland, San Francisco and San Jose, the heart of Silicon Valley. The economy of the Bay Area is approximately \$300 billion annually. The regional economy not only is dependent on an adequate supply of quality water to thrive, but also is closely linked to the environmental health of the Bay-Delta Ecosystem. As an association of major employers, the Bay Area Council has been involved in California water policy issues during the last two decades, and since 1994, has been deeply engaged in the CALFED Bay-Delta Program. The Bay Area Council also works closely with a coalition of business-sponsored, employer-based statewide and regional organizations throughout California.

The following points summarize the perspectives of the Bay Area Council and the coalition of business-sponsored, employer-based organizations in support of S. 1097 and implementation of the CALFED Bay-Delta Program and Record of Decision.

With the state and the nation still recovering from a prolonged economic downturn, it is critical that we do not hamper economic recovery because of a water system in chaos.

California faced economic chaos and political paralysis in early 1990 when urban areas throughout the state were imposing mandatory rationing due to drought and policy gridlock. At that time, businesses were questioning whether to expand or locate plants in California, because of concerns regarding unreliable water supplies. Farmers in the southern San Joaquin Valley received no surface water supplies and key fisheries in the Bay-Delta watershed were declining at alarming rates.

The Bay-Delta Ecosystem is the largest estuary in North America, a key stop on the Pacific flyway. It also is a critical drinking water source for 22 million Californians. In addition, the water supplies from this watershed also fuel California's economic engine, now the 5th largest economy in the world.

Employers that drive economic growth and productivity are among the most dependent on reliable, high-quality water. Thriving businesses lead to more jobs that lead to a stronger economy. California's growing population, expected to approach 50 million by 2020 will need more jobs. The Bay Area alone is projected to generate more than 1 million new jobs by 2020 and grow by an estimated 1.4 million people.

The CALFED Bay-Delta Program provides the road map for the future of California water. The key components of the plan are to improve water supply and quality and the ecological health of the Bay-Delta Ecosystem.

Through the CALFED Program and local investment in water conservation, reclamation and other programs, considerable gains are being made in water supply reliability. The water market between willing buyers and sellers has also improved.

Most impressive have been gains in CALFED's unprecedented ecosystem restoration program.

California businesses have invested literally billions of dollars to increase their water efficiency and get more out of every gallon of water.

But full implementation of the CALFED Bay-Delta Program cannot be realized without federal authorization and funding.

S. 1097 provides the authorization and funding to advance the CALFED storage and conveyance programs. The business community views these components as critical pieces to improving the water supply for both California and the states served by the Colorado River.

Funds also are included for water quality improvements vital to Bay Area and California high value-added industries, such as information technology and life sciences.

This legislation also continues to support California's aggressive efforts in the area of water use efficiency, water recycling and desalination.

S. 1097 helps to continue the commitment to environmental restoration in an essential partnership with responsible federal agencies to ensure timeliness and optimal benefit.

The CALFED Record of Decision was an historic accomplishment made possible because of unprecedented cooperation and collaboration between federal and state leaders and agencies. A broad base of stakeholders joined forces to support an integrated, balanced set of actions essential to restore the environment and support economic prosperity. It is critical that the federal government remain a vital partner in the CALFED Bay-Delta Program. Now is the time for action. Approval of S. 1097 ensures that the Bay-Delta Ecosystem will be protected and restored while California's economy has the necessary water resources to rebound and sustain prosperity.

Senator MURKOWSKI. Thank you very much. I appreciate that.
Mr. Graff.

**STATEMENT OF THOMAS J. GRAFF, REGIONAL DIRECTOR,
ENVIRONMENTAL DEFENSE, OAKLAND, CA**

Mr. GRAFF. Thank you, Madam Chair and Senator Feinstein.

I, too, want to add my comments to those of others, other Senators and Sunne McPeak. It's always difficult to follow Sunne McPeak when one is on a panel. In the old days, when she was the supervisor and the Senator was mayor and supervisor, we all worked together on a little project called the Peripheral Canal Referendum. Those were amazing days, I have to say.

However, Senator, your remarkable efforts and persistence on these issues are something that your colleagues have recognized. That's obviously more important than my recognizing it, but I do want to, sort of, attach my voice to that set of comments, as well, and just to commend you on the ability to get a letter from the Governor-elect and have that be one of the first comments of our new leader-to-be in California.

I'm going to just take highlight excerpts from my written testimony—I know that's part of the record—and hopefully not take too much of the committee's time.

I start by saying that the fundamental questions that S. 1097 presents to this subcommittee, and ultimately to the Congress as a whole and to the President, are two: One, whether the Calfed Program should be authorized at all; and the other, if it is to be authorized, should it be authorized, quote, "in a manner consistent with" the August 28, 2000, ROD?

The Calfed Program, as it has evolved, has much to commend it. Most notably—although it has, of course, not operated without considerable friction among some stakeholders, including some at this table and between the Federal and State governments, almost irrespective of political party—it's greatest strength is that it brings

the Federal and State water project operating agencies and departments and the Federal and State natural resource management agencies under one umbrella. Calfed pressures agencies to consult, to resolve differences, and to operate in a more consistent manner. And I think Senator Feinstein deserves immense credit for making all that happen.

And that has had effects. Speaking narrowly, from the environmentalist perspective, the birds of the Pacific flyway, and the migratory and resident fish of the San Francisco Bay-Delta watershed generally are better off today than they were a decade ago when Calfed was originally launched. And this, of course, is also a tribute to Congress, and, in particular, to the passage of the CVPIA in 1992, and to the work of—the bipartisan work, I might add, of Senators Bradley and Garn in passing that bill.

Other Federal laws also play important parts in protecting the ecosystem, the Endangered Species Act, the Clean Water Act, Fish and Wildlife Coordination Act, among others.

So even if a Calfed Program, per se, is not formally reauthorized by Congress, some version of it, we believe, will surely continue. The merits of Federal/State and of operator/resource-manager cooperation have been widely recognized, and all agencies recognize the importance of working together to resolve or at least minimize conflicts.

So that's the good news. What's the bad news?

The bad news is that the Record of Decision of August 28, 2000, has not been funded. And I just might comment, in retrospect, that was clear that it was not going to happen, even under the very budgetarily positive circumstances, Federal and State, that were still the case in 2000, and here we are, of course, 3 years later, when the fiscal realities are very different at both levels of government.

The most fundamental assumption, that has proved to be false, from the August 28, 2000, ROD, was the one Secretary Babbitt made in assuming that there would be a minimum of \$2.5 billion in Federal funds available to subsidize Calfed for just the first 7 years of the program's life. And it is a 30-year program. In his view, the Federal share would have matched comparable State and user shares for a total of \$7½ billion, and it was actually an \$8½ billion program, and the ROD never identified the other billion as to where it would come from.

The second assumption that's proved to be false is the remarkable expectation at the time that water users would step forward to pay their fair share of the program's costs.

Anyone looking at the circumstances, even in 2000, would have, I think, concluded that the users had no intention of contributing significant funds to the environmental restoration objectives of the ROD. Indeed, their principal financial objective was to get taxpayers to pay, not only for restoration, but, as much as possible, for mitigation, including the year-to-year funding for the so-called environmental water account.

And we are supporters, I might add, of the environmental water account, but it is a mechanism that allows the water users to have their full export quantities, and it ought to be viewed as mitigation and paid for by users, rather than be subsidized by taxpayers.

Similarly, the users apparently have no intention of paying for new surface storage projects either. Their goal, again, Federal and State taxpayer subsidies justified, if they believe justification is needed at all, by specious arguments that the dams they hope and expect taxpayers will fund are environmental dams that have no user benefits warranting significant contributions by project beneficiaries.

Senator MURKOWSKI. Mr. Graff?

Mr. GRAFF. Yes?

Senator MURKOWSKI. I'm going to have to interrupt you. We've got just a couple of minutes left in a vote.

Mr. GRAFF. Okay, I'll try and wrap up.

Senator MURKOWSKI. I was hoping that you would be able to wrap up your testimony before we took a break.

Mr. GRAFF. I just wanted to point out, then, a couple more things, that the administration is not even funding 25 percent of reclamation projects, and that's too bad. And then, lastly, although this is a complex matter, probably beyond the interest of many who are not from California, the projects and the water exporters went to a meeting to which they did not invite many other interested parties, including many who have opposed Calfed from the start, and came up with a program to increase Delta exports by a million acre-feet per year, or more.

And I brought the documentation for that, in case anyone's interested. I understand they're now back-pedaling from that number, but it is the number that they put out. And our position, basically, on the second part of the bill, whether to reauthorize this program on the basis of the August 28, 2000, ROD is, no, until at least we understand better what the million acre-feet of additional exports mean and we know where the funding is coming from.

Thank you.

[The prepared statement of Mr. Graff follows:]

PREPARED STATEMENT OF THOMAS J. GRAFF, REGIONAL DIRECTOR,
ENVIRONMENTAL DEFENSE, OAKLAND, CA

Madam Chair, members of the subcommittee: Thank you for your invitation to testify today on S. 1097, the Calfed Bay-Delta Authorization Act.

I am Thomas J. Graff, California Regional Director of Environmental Defense, a national environmental advocacy organization. I have represented Environmental Defense in various capacities since 1971. I have also served on several boards and commissions that have dealt with issues related to those raised by S. 1097, including the Colorado River Board of California, the National Research Council's Committee on Western Water Management Change, the San Joaquin Valley Drainage Investigation Program Citizens Advisory Committee, and the Bay Delta Advisory Council.

S. 1097 is a complex bill whose basic intent, as stated by its authors, is "To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program". Definitions proposed in the bill indicate that the Calfed Program includes "programs, projects, complementary actions, and activities undertaken through coordinated planning, implementation, and assessment activities of . . . State and Federal agencies in a manner consistent with [a] Record of Decision (ROD) dated August 28, 2000, issued by the Federal agencies and supported by the State".

The fundamental questions S. 1097 presents to this Subcommittee and ultimately to the Congress as a whole and to the President are:

- (1) Whether the Calfed Program should be authorized at all; and
- (2) If it is to be authorized, should it be authorized "in a manner consistent with" the August 28, 2000 ROD.

These are important and difficult questions not only for California's Senators and Representatives, but also for Senators and Representatives hailing from other states of the Union, especially the Western Reclamation States. The answers Congress gives to these questions will have reverberations in physical terms, in economic repercussions, and in setting precedents on significant issues of natural resource management and of federalism, that will bear on the other 49 states almost as much as they will impact California and its resources and governance directly.

The Calfed Program, as it has evolved, has much to commend it. Most notably, although it has of course not operated without considerable friction among stakeholders and between the Federal and State Governments, almost irrespective of political party affiliation, its greatest strength is that it brings the Federal and State water project operating agencies and departments and the Federal and State natural resource management (and to some degree regulatory) agencies under one umbrella. Calfed pressures agencies to consult, to resolve differences, and to operate in a more consistent, coordinated, and cooperative manner, that addresses the interests of many stakeholders.

Speaking narrowly from the environmental perspective, the birds of the Pacific Flyway and the migratory and resident fish of the San Francisco Bay Delta watershed generally are better off today than they were a decade ago, when Calfed was originally launched. This is in large measure a tribute to Congress' passage of the Central Valley Project Improvement Act (CVPIA) and especially in this body to the work of Senators Bradley and Garn in passing the 1992 omnibus water projects act. But it also reflects the operations of other federal laws, including the Endangered Species Act, the Clean Water Act and the Fish and Wildlife Coordination Act, all of which give Federal (and to some degree State) wildlife and environmental quality managers authority and tools to fulfill their mandates, working in cooperation with the water project operating agencies, who generally view their principal responsibility to be the delivery of water supplies to their contractors.

Even if a Calfed program per se is not formally reauthorized by Congress, some version of it will surely continue. The merits of Federal-State and of operator-resource manager cooperation have been widely recognized, and all agencies recognize the importance of working together to resolve, or at least minimize, conflicts.

The much more difficult question, however, is not whether a Calfed program of some kind should proceed, whether with formal Congressional authorization or without, but rather whether the program that proceeds should be the one adopted by the Clinton and Davis Administrations on August 28, 2000 in the Record of Decision signed by Secretary of the Interior Babbitt and Secretary of Resources Nichols. Many in the environmental community have pinned their hopes on the 2000 ROD, have successfully worked to pass large State bond measures and funding authorizations based on the 2000 ROD, and have rightfully criticized significant decisions, particularly decisions by the Department of the Interior, that have cut back on environmental assurances promised in the 2000 ROD.

For Environmental Defense, however, whatever one's view may have been of the merits of the 2000 ROD when it was issued, it should be clear now, more than three years later, that basic assumptions underlying the ROD are no longer valid and that the fundamental political compromise that Secretaries Babbitt and Nichols forged—that appeared to give both the export contractors and environmental advocates expectations that Calfed would meet their needs has proved to be unsustainable in the real world of stakeholder negotiations and of pressure on project operators and resource managers to deliver on these expectations.

The most fundamental assumption that has proved to be false was the one Secretary Babbitt made in assuming that there would be a minimum of \$2.5 billion in Federal funds available to subsidize the Calfed program over just the first seven years of the program's life. In his view, this Federal share would have matched comparable State and user shares for a total of \$7.5 billion. For an additional billion dollars of the \$8.5 billion that the 2000 ROD contemplated would be spent in the first seven years, the ROD identified no source.

The second assumption that also has proved to be false was the remarkable expectation that water users would step forward to pay their fair share of the program's costs. For any veteran observer of the history of both the Central Valley Project and the State Water Project, it was of course obvious even in 2000 that the users had no intention of contributing significant funds to the environmental restoration objectives of the ROD. Indeed, their principal financial objective was to get taxpayers to pay not only for restoration, but as much as possible for mitigation of their own project environmental impacts, an objective on which they have made significant headway not only in the passage of State Propositions 40 and 50, but also in year-to-year Congressional and State funding of the so-called "Environmental" Water Account.

It also should have been obvious then, as it is obvious now, that the users have no intention of paying for new surface storage projects either. Their goal again: Federal and State taxpayer subsidies justified, if they believe justification is needed at all, by specious arguments that the dams they hope and expect taxpayers will fund are environmental dams, that have no user benefits warranting significant contributions by project beneficiaries.

It is with respect to the federal funding issue that the contrast is perhaps greatest between the last Federal Administration and the current Administration. Secretary Norton's Water 2025 initiative and her Administration's recent successful conclusion of the package of agreements surrounding the California 4.4 Plan are real achievements, but they are not major departures from the efforts of Secretary Babbitt that preceded Secretary Norton's involvements. What is a departure was perhaps most graphically demonstrated in Administration testimony just last month before this Subcommittee's counterpart in the House of Representatives.

Testifying on a group of bills to authorize Federal participation in a number of wastewater recycling projects, including a bill introduced by Rules Committee Chairman David Dreier, on which Federal cost-shares are generally limited to no more than 25 percent of the projects' costs, the Administration brusquely opposed all the projects (which Senator Boxer is co-sponsoring in the Senate). To quote the Administration testimony on just one of these bills, Congressman Dreier's H.R. 2991: "Any new project authorized at this time will place an additional burden on Reclamation's already tight budget, and could potentially delay the completion of other currently authorized projects. With the tremendous back log of existing Title XVI projects, we cannot support the addition of new projects at this time."

If there is no Federal money available to cost-share, at no more than 25 percent of their total cost, broadly beneficial and supported wastewater reclamation projects, for which there are local co-sponsors and supplemental funding lined up, what chance is there that the \$8.5 billion program envisioned in the CALFED 2000 ROD will ever be funded at the Federal level?

The lack of assumed Federal funding for most purposes and the lack of assumed user funding for environmental purposes and for dam construction, however, are not the only major problems with the 2000 ROD. The other fundamental problem with the 2000 ROD was the expectation it created among the Federal and State water project export contractors that San Francisco Bay Delta exports could be substantially increased, without substantial adverse effects on the Bay, other water users, upstream and Delta interests, and the environment. Several of the more suspicious and paranoid, or perhaps far-sighted, advocates of these often overlooked constituencies were critical of the 2000 ROD from the start. The Farm Bureau, the Regional Council of Rural Counties, the Central and South Delta Water Agencies and Trinity River protectors, to name just a few opponents, either filed litigation or pursued active political opposition against the ROD or both.

Now, just three years after the ROD's issuance, their skepticism has proven to be fully warranted. This July, at a meeting in Napa attended by Federal and State project operators and Federal and State export contractors, but not by Calfed's leaders, by Federal or State natural resource managers, or by representatives of many other water interest or environmental groups, a Proposition was developed to increase Delta exports. According to its leading proponents, the Napa Proposition and associated projects authorized in the 2000 ROD would increase Delta diversions by a million acre feet per year or more. Definitely without any of the new proposed storage projects that the 2000 ROD singled out for feasibility analysis and mostly without significant financial investment in new projects of any kind, the Napa Proposition "created" a million acre feet for its stakeholder participants.

Claiming that it was simply implementing the 2000 ROD, the Napa Proposition would allow State Water Project contractors (who are not subject to the acreage limitations established in federal law) unprecedented access to the Central Valley Project's water storage reservoirs. It would also accept as a liability of the Central Valley Project much of the more junior State Water Project's responsibility to meet water quality and environmental obligations in the Bay and Delta and beyond. In exchange, the most junior contractors of the Central Valley Project receive an additional water supply. And what operational flexibility and opportunity for coordination Napa determined the projects can muster are reserved exclusively for the exporters' benefit.

All this, of course, would operate to the detriment of the other interests who were not invited to the Napa negotiations, including not only Bay, Delta, upstream, and environmental interests, but Trinity River proponents as well. Despite the United States' trust obligation to the Hoopa and Yurok Tribes, no promise was extracted from any CVP contractor that it would dismiss litigation against the United States, the Trinity River and the Tribes, even though CVP contractors would receive very

substantial benefits if Napa were to be implemented. The oft-repeated mantra of the project contractors—"We should all get better together"—rings hollow indeed in Napa's aftermath.

So the fundamental issue this Subcommittee faces, as it considers S. 1097, is whether to authorize a program based on the 2000 ROD, for which little federal or user funding is likely to be forthcoming and which is expected by its principal stakeholder proponents to provide a million acre-feet or more per year of additional Delta exports.

When the question is posed in this manner, I believe the whole Senate, including the bill's sponsors, should oppose the bill. It ought now to be incumbent, especially on the Napa Proposition's drafters, to explain how the CVP and the SWP can safely and equitably increase their draw on the Bay Delta ecosystem and on northern California generally by over a million acre feet, how they can do it without significant new Federal and user funding, and how they can do it without adverse impacts on other communities and on the environment.

Environmental Defense challenges the contractors to make their case. If they cannot make their case, this is not the end of Calfed. But it should be the end of the unreasonable and unsustainable expectations of additional Delta exports that were created by the Calfed ROD and that are expanded and codified in the Napa Proposition.

Senator MURKOWSKI. Thank you.

I'm going to let everybody take a little stretch break while we go vote, and we'll be back in a few minutes.

Thank you.

[Recess.]

Senator MURKOWSKI. Okay, we are back on the record. I apologize for that delay. Hopefully, we'll be able to get through the balance of the panel without any further interruption.

Mr. Birmingham, if you can give us your testimony, please?

STATEMENT OF THOMAS W. BIRMINGHAM, GENERAL MANAGER/GENERAL COUNSEL, WESTLANDS WATER DISTRICT, FRESNO, CA

Mr. BIRMINGHAM. Thank you, Madam Chairman and Senator Feinstein.

At the outset, I want to state that Westlands strongly supports S. 1097, and would like to extend to Senator Feinstein Westlands' appreciation for her introduction of this bill.

I wish that Senator Kyl and Senator Burns were here, because I would like also to extend to them our appreciation for their hard work in the last Congress, with Senator Feinstein, to craft a bill.

But I would like to extend to Senator Kyl and Senator Burns our appreciation for their hard work, on behalf of California and the Nation, to craft a bill in the last Congress that we could then, and now, enthusiastically support.

Westlands Water District is one of 32 Central Valley Project contractors south of the Bay-Delta that receive water from the Central Valley Project primarily for irrigation purposes.

I certainly don't want to disagree with anything that Senator Feinstein said in her opening remarks, but, frankly, Calfed probably is a little bit—from our perspective, a little bit too late and too little. Agriculture on the west side of the San Joaquin Valley, which is one of the most productive regions in the world, is at risk because of inadequate water supplies. Over the course of the last 10 years, we have seen our water-supply reliability go from an average of 92 percent, in 1991, to a 50 percent reliability based upon the regulatory baseline described in the Calfed Record of Decision.

That water supply has improved over the course of the last few years, in large part thanks to the prodding of Senator Feinstein and the efforts of the Calfed agencies to improve water-supply reliability. But if we're going to sustain agriculture on the west side of the San Joaquin Valley and in other areas of California, we must move forward with the Calfed Program.

In 1957, prior to the construction of the State Water Project that Senator Feinstein referred to in her comments, the California Department of Water Resources wrote, in the first California Water Plan Bulletin, bulletin three, "California is presently faced with problems of a highly critical nature, the need for further control, protection, conservation, and distribution of her most vital resource, water.

Today, the future agricultural, urban, and industrial growth of California hinges on a highly important decision, which is well within the power of the people to make. We can move forward with a thriving economy by pursuing a vigorous and progressive water development planning and construction program, or we can allow our economy to stagnate, perhaps even retrogress, by adopting a complacent attitude and leaving each district, community, agency, or other entity to secure its own water supply as best it can with small regard to the needs of others.

As Senator Feinstein said, today we're facing an identical problem. We're trying to maintain the economy of the State of California with an infrastructure that was designed and constructed when the population of the State was 14 to 16 million people, and today we are at 35 million people, and we will have inevitable growth that must be accommodated through the construction of new water infrastructure.

As Senator Feinstein indicated in her opening remarks, California has very many different water needs—water for environmental restoration, for cities, and for farmers. If the needs are going to be met, we must have a program for water conservation, recycling, and desalination; water quality must be improved; but, of greater importance, from our perspective, we need new water storage and water conveyance. The Calfed Program was designed to meet the needs of all of these water interests in an evenhanded manner, and S. 1097 provides the needed authorization for continued Federal participation in the Calfed program.

We are going back to a situation that existed without the authorization. We will go back to the situation that existed prior to 1994, when the Calfed Program was authorized, where the many Federal agencies that had a role in regulating water in the State of California—the Environmental Protection Agency, the Army Corps of Engineers, the Bureau of Reclamation, the Fish and Wildlife Service, and the National Marine Fisheries Service—were all taking divergent views of what should be done. As Senator Feinstein indicated, among the primary purposes of the Calfed Program were to put all of these agencies under one umbrella, where they could move forward together.

Today, because of the lack of authorization for the Calfed Program, many of the agencies are no longer acting as full partners in the Calfed Program. In particular, the Environmental Protection Agency and the Army Corps of Engineers will play vital roles in

the development of a balanced Calfed Program, and the authorization provided by S. 1097 is critical to bringing them back under the Calfed umbrella.

At this point, I would like to, again reiterate our support for S. 1097. I think that S. 1097, or the Calfed Program, is a model that could be used by other States who have similar competing needs for water. It is a model of cooperation. And because it attempts to address the needs of all water interests in a balanced manner, it has the potential of being highly successful.

And, again, I thank the committee, or the subcommittee, for hearing my testimony. I would request that it accept my written testimony in the record.

Thank you.

Senator MURKOWSKI. We will do that.

[The prepared statement of Mr. Birmingham follows:]

PREPARED STATEMENT OF THOMAS W. BIRMINGHAM,
GENERAL MANAGER/GENERAL COUNSEL, WESTLANDS WATER DISTRICT, FRESNO, CA

Madam Chairman and members of the Committee, thank you for allowing me to testify regarding S. 1097, the California Bay-Delta Authorization Act (Act), introduced by Senator Feinstein to authorize the CALFED Bay-Delta Program. My name is Thomas Birmingham, and I the General Manager/General Counsel of Westlands Water District ("Westlands"). At the outset, I want to state that Westlands strongly supports S. 1097 and extend to Senator Feinstein Westlands' appreciation for her introduction of this legislation. The enactment of S. 1097 would ensure that the CALFED Program is implemented in a balanced and innovative manner that links progress on environmental restoration and enhancement with progress on water supply and water quality improvements. Its passage is of great importance to the people of California, indeed the nation.

Westlands Water District is a California water district that serves irrigation water to a 605,000 acre area on the west side of the San Joaquin Valley in Fresno and Kings counties. The District averages 15 miles in width and is 70 miles long. The demand for irrigation water in Westlands is 1.4 million acre-feet per year. Historically, that demand has been satisfied through water made available to the District from the Central Valley Project under contracts with the United States for the delivery of 1.15 million acre-feet.

Westlands is one of the most fertile, productive and diversified farming regions in the nation. Rich soil, a good climate, and innovative farm management have helped make the area served by Westlands one of the most productive farming areas in the San Joaquin Valley and the nation. Westlands farmers produce over 50 different commercial fiber and food crops sold for the fresh, dry, canned or frozen food markets; domestic and export. Crops grown in Westlands include almonds, apples, apricots, asparagus, broccoli, cantaloupes, table grapes, wine grapes, lettuce, tomatoes, and cotton.

Westlands estimates that the value of crops produced by farmers in the District exceeds \$1 billion per year. Using a well-accepted economic assumption that every \$1 produced on-farm generates another \$3.50 in the economy, Westlands farmers produce nearly \$3.5 billion in economic activity annually. Like every other region of the arid west, the ability of our farmers to produce crops and generate this economic activity depends on the availability of an adequate, reliable source of water.

Farmers in Westlands benefited from the vision and foresight of prior Californians and federal officials who planned, designed, and constructed the Central Valley Project and the State Water Project. Among these visionaries were the California Department of Water Resource engineers who wrote 1957 California Water Plan. They observed:

California is presently faced with problems of a highly critical nature the need for further control, protection, conservation, and distribution of her most vital resource water. While these problems are not new, having been existent since the advent of the first white settlers, never before have they reached such widespread and serious proportions. Their critical nature stems not only from the unprecedented recent growth in population, industry, and agriculture in a semiarid state, but also from the consequences of a long period during which the construction of water conservation works has not kept pace with the in-

creased need for additional water. Unless corrective action is taken—and taken immediately—the consequences may be disastrous.

Today, the future agricultural, urban, and industrial growth of California hinges on a highly important decision, which is well within the power of the people to make. We can move forward with a thriving economy by pursuing a vigorous and progressive water development planning and construction program; or we can allow our economy to stagnate, perhaps even retrogress, by adopting a complacent attitude and leaving each district, community, agency or other entity to secure its own water supply as best it can with small regard to the needs of others. The choice of these alternatives is clear.

The need for coordinated planning on a statewide basis has long been realized. Comprehensive plans have been formulated and reported upon in the past, and noteworthy accomplishments have been achieved by local enterprise and private and public agencies. But despite the great water development projects construed in the past, California's water problems continue to grow day by day.

Today, the people of California are faced with an identical problem. Since the California Water Plan was written in 1957, the population of the state has grown from 14 million to over 35 million people, and the Department of Water Resources projects that by the year 2020, the population will exceed 50 million people. Yet, except for the efforts of a few local agencies, like Metropolitan Water District of Southern California, Kern County Water Agency, and Contra Costa Water District virtually no new storage has been constructed. Stated succinctly, California is attempting to maintain the state's economy with water infrastructure has changed little from the 1960s. It is inadequate to meet the existing demands of the state, let alone accommodate inevitable growth. The CALFED Program is designed to address the immediate need to construct new water conveyance and storage facilities and provide essential tools to better manage California's water resources, while at the same time restoring and enhancing the Bay-Delta watershed.

Westlands views the CALFED Program from a perspective that is substantially different than most water agencies in the state. Over the course of the last 12 years Westlands, along with other agencies on the westside of the San Joaquin Valley that contract with the United States to receive water from the Central Valley Project, has experienced chronic water shortages, even in wet hydrologic periods. These shortages are the result of the implementation of the federal Endangered Species Act and the Central Valley Project Improvement Act, which was passed by Congress and signed into law by former President George Bush in October 1992.

The purposes of this Act were:

- (a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
- (b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;
- (c) to improve the operational flexibility of the Central Valley Project;
- (d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;
- (e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;
- (f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

The CVPIA was implemented by the Department of the Interior in a manner that has reallocated more than 1,000,000 acre-feet of Project water away from farmers who relied upon this water for decades to the environment—for the restoration and enhancement of fish and wildlife. Moreover, virtually all of the water supply reductions that have resulted from implementation of the Act have been imposed on south-of-Delta Central Valley Project agricultural water service contractors. Indeed, the reliability of water supplies for these contractors, including Westlands, went from 92% on average in 1991 to 50% under the regulatory baseline described in the CALFED Record of Decision.

The disproportionate impact of these regulatory requirements on the water supplies of west side farmers was recognized by Governor Gray Davis and former Secretary of the Interior Bruce Babbitt in June 2000, when they signed the CALFED document entitled "California's Water Future, A Framework for Action." In that document Governor Davis and Secretary Babbitt correctly noted that Westlands and other San Joaquin Valley agricultural water contractors had been "disproportionately affected by recent regulatory actions," and they described a number of actions

that would restore, over both the short-term and the long-term, these contractors' water supplies.

During the first three years of Stage 1 of the CALFED Program the water supplies of Westlands and other south-of-Delta Central Valley Project agricultural water service contractors have been restored to a significant degree. But the viability of agriculture in this region is still at risk because of inadequate water supplies. Implementation of the actions that will provide long-term benefits to these contractors will require the continued commitment of the federal government to the CALFED Program. These actions include construction of an intertie between the California Aqueduct and the Delta-Mendota Canal and implementation of the South Delta Improvement Program, which will increase pumping at the Harvey O. Banks Pumping Plant to 8500 cubic feet per second and provide water quality improvements and other benefits for in-Delta water users.

There are numerous reasons the federal government has a prominent role in implementing CALFED Program. First, the United States Bureau of Reclamation operates the Central Valley Project, the largest water supply project in California. In addition, other federal agencies, including the Fish and Wildlife Service and the Army Corp of Engineers, play a role in regulating the operations of the Central Valley Project or the State Water Project and will play a role in restoring water supply reliability to agencies that rely on water diverted from the Delta. These federal agencies were full partners in the creation of the CALFED Program in 1994 because, in part, they understood that a successful program to accomplish restoration of the Bay-Delta ecosystem, improve water quality, and restore water supply reliability would require a coordinated effort.

California has many different water needs: water for restoration for our environment; water for cities; and water for farms. If these needs are going to be met there must be programs for water conservation, recycling and desalination. Water quality must be improved. And of equal importance, we need new water storage, both groundwater and surface, and improved water conveyance. The CALFED Program was designed to meet all of these needs in an evenhandedly manner. S. 1097 provides the needed authorization for continued federal participation in the CALFED Program.

Of great importance to Westlands, S. 1097 explicitly requires balanced implementation of the CALFED Program. Key to maintaining that balance is the on-going consideration of surface water storage projects.¹ The bill addresses Westlands' fear that environmental projects not needing authorization would sail smoothly ahead, while storage projects lacking Congressional approval would languish; it includes a provision requiring the Secretary of the Interior to annually certify that the CALFED Program is progressing in a balanced manner among all of its components. If the Program is found to be out of balance, the bill would require that the Secretary revise the schedule.

The CALFED Record of Decision has been correctly characterized as "CALFED's road map." The Record of Decision sets forth commitments to attend to the water needs of all Californians, cities, farmers, and environmentalists. S. 1097 would approve the CALFED Record of Decision as the basic policy framework for future state-federal cooperation on California water management, while not modifying the federal agencies' obligations to implement federal law.

Finally, S. 1097 provides federal resources for the implementation of the CALFED Program in a fiscally prudent manner. The bill would require the Office of Management and Budget to prepare a crosscut budget showing the federal funding of each of the different agencies, and it sets forth a specific list of the projects to be funded and how much each would receive.

- The bill authorizes \$102 million for planning and feasibility studies for water storage projects—and an additional \$77 million for conveyance.
- The bill authorizes \$100 million for ecological restoration. This means improving fish passages, restoring streams, rivers and habitats and improving water quality.
- The bill authorizes \$153 million for water conservation and recycling.
- The bill authorizes up to \$95 million for local California communities to develop plans and projects to improve their water supplies.
- The bill authorizes \$50 million for watershed planning and assistance.
- The bill authorizes \$70 million for improved levee stability.

¹ Parenthetically, we take note of the encouraging results in recently published engineering reports that are part of the Integrated Storage Investigation of In-Delta Storage. These reports generally conclude that the project is technically feasible. We hope that the CALFED Program will move to the next logical step of preparing a proposal to develop the project that reflects its benefits and that is acceptable to all participating parties.

- The bill authorizes \$75 million for the environmental water account, which purchases available water for environmental and other purposes.

Stated succinctly, S. 1097 was carefully crafted to be consistent with the balance reflected in the CALFED Record of Decision, and its implementation will assure continued improvement in water supply, water quality, and environmental restoration to the benefit of California and the nation. Westlands encourages the Committee and the Senate to act quickly to pass this important legislation. Madame Chairman, this concludes my testimony. I would be happy to answer any questions that you or the members of the subcommittee may have.

Senator MURKOWSKI. Thank you, Mr. Birmingham.
Mr. Gastelum, welcome to the committee.

STATEMENT OF RONALD GASTELUM, CEO, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, LOS ANGELES, CA

Mr. GASTELUM. Madam Chairman, Senator Feinstein, thank you for this opportunity.

I'd like to begin by observing that this is not the first time that Senator Murkowski, from the great State of Alaska, has played a key leadership role on Calfed. And speaking of California, we'd like to thank both of them for their contributions.

I have submitted detailed written testimony in support of S. 1097, and ask that it be included in the formal record of today's proceedings.

Senator, I noted that you asked four questions at the beginning of the hearing. I would like to augment our testimony and specifically respond to each of those questions.

From a southern California perspective, I'd like to focus in this hearing on a few key points. California is organized, forward-thinking, and progressive in its water management because we've learned from our experience. California, in general, and southern California, in particular, have stepped up to the new reality of water management that most of the country will face as the 21st century proceeds and the pressure on our water resources becomes more complex. Our example will be useful to the rest of the country in many ways, and we need the Federal Government to play its role and do its part.

Today, Metropolitan serves water from the State Water Project and the Colorado River to almost 18 million people in urban southern California. And through conservation and an emphasis on increasing local water resources, we do it with about the same amount of water that we served to 5 million less people in the early 1980's. Tomorrow, that number will grow, and our job is to continue to be reliable in the face of numerous challenges, including meeting California's commitment to live with its basic Colorado River water allocation, a rapidly growing list of new water-quality standards, and real limitations on the capacity of the State Water Project and the Central Valley Project to meet their water supply and water-quality contract obligations to Metropolitan and many others.

From a distance, it may appear that California has insurmountable problems—natural disasters, economic issues, our State's unique personality, and others. While these may certainly present difficulties, there has never been a better time in our ongoing effort to manage our water quality and quantity. Never have California's

water stakeholders been more in concert, and never before have we had more tools for effective management in place. With the completion of the Quantification Settlement Agreement, after long years of conflict, we have added to the foundation of living within our Colorado River apportionment and assuring the other States' interest. The foundation began with southern California's integrated resources plan in the early 1990's.

I would submit, as proof of this assertion, more than the signing of an agreement, the QSA, or growing recognition throughout the country of our resource plans, I offer the fact that when the Department of the Interior cut Metropolitan's Colorado River water supply by 60 percent in January of this year, we fully complied with the Department's order and met all customer demands, all during a record year of drought and even with the added demand of the current firestorm.

We did it because our plan provides for a balanced and diverse set of resources and facilities to avoid over-reliance on any single source of supply. And an immediate example of how this strategy is working is our ability to provide water from our reservoirs, at no cost to local, State, and Federal agencies, in the effort to fight the southern California fires. Tankers are able to get access to three or four of our reservoirs that have water in them because of this program, to be able to deal with that emergency.

So on that basis, both the QSA and Calfed reflect today's new fundamental reality, that water-supply reliability can best be achieved through a diverse and balanced set of actions, including storage, conservation, reclamation, and reuse and desalination, while ensuring environmental protection and enhancement. This diverse strategy toward developing our water resources requires cooperation on many levels. Calfed and partnership between the State of California and the Federal Government are essential.

S. 1097 authorizes the Federal agencies to participate and provides Federal resources for implementation of Calfed. Local agencies in the State of California are investing billions of dollars, much of it through voter-approved bonds, to assure the success of Calfed. Unfortunately, the Federal share has lagged considerably behind. While none of the California stakeholders expect this to be a Federal program with a majority share coming from the Federal Government, some Federal funding and Federal participation are a must. The country will benefit from this participation, too, in the form of technology advances and decision-making models that can be applied in other States facing the same challenge.

Metropolitan is a strong proponent of cost share for benefits received from water-management programs. The success of a major complex public process, such as Calfed Program, rests ultimately in perceptions of fairness, that those who benefit from the implementation help pay for those actions in reasonable proportion to the benefits received, and that those who pay should be assured that they will receive appropriate benefits.

In southern California today, we have spent billions of dollars to be able to effect the strategy that Senator Feinstein outlined, backing off from imports in dry years and being able to take advantage, consistent with a Calfed Program, in wet years, and put that in storage. We have increased, in southern California, our storage

from what we had in the early 1990's tenfold, and not a single Federal dollar has been used in that process. We are fully committed, in California, to pay our fair share of the costs.

In conclusion, let me reiterate that we do support S. 1097, and Mr. Calvert's bill in the House. We commend you for holding this hearing, other Senators and Senate staff that have offered advice to strengthen this legislation, and we commend Senator Feinstein for her continued leadership. She is truly recognized throughout our State for her expertise in water resources and record of achievement in bringing consensus to solve some of our most complex and difficult problems.

Thank you, again, for this opportunity.

[The prepared statement of Mr. Gastelum follows:]

PREPARED STATEMENT OF RONALD GASTELUM, CEO,
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, LOS ANGELES, CA

Madam Chairman and members of the subcommittee, thank you for this opportunity to testify regarding S. 1097, the California Bay-Delta Authorization Act (Act), introduced by Senator Feinstein to implement the CALFED Bay-Delta Program. My name is Ronald Gastelum. I serve as Chief Executive Officer of the Metropolitan Water District of Southern California (Metropolitan). Metropolitan is a supplemental water supplier for the Southern California regional economy. We serve a population of more than 17 million people and an economy that generates an annual gross domestic product of nearly \$700 billion and provides about 8 million jobs. Metropolitan has been constructively engaged in the CALFED process since its conception and we strongly support the balanced policy direction of CALFED.

METROPOLITAN SUPPORTS S. 1097

Metropolitan strongly supports S. 1097 and urges its passage by this subcommittee and the full Senate at the earliest possible date. Recently, California finalized the Quantification Settlement Agreement (QSA) that after 8 years of arduous negotiations lays a foundation to live within our long-term apportionment of 4.4 million acre-feet of Colorado River water annually. Similarly, the CALFED Bay-Delta program is designed to provide essential tools to better manage California's available water resources. CALFED provides a wide range of modern management tools to improve water supply reliability, enhance water quality, restore the environment, and protect the Sacramento-San Joaquin River Delta.

Both the QSA and CALFED reflect today's new fundamental reality that water supply reliability can only be achieved through a diverse and balanced set of management actions that enhance regional management efforts, improve water quality, and promote environmental restoration. There are no single project silver bullets in our planning. Rather, success will be achieved through cooperative efforts based on credible science to guide decision-making and financial partnerships among the beneficiaries. Already, urban Southern California meets 53 percent of its water demands through conservation, water recycling, and local clean water management programs.

In California, the state government and local public agencies have committed unprecedented resources to make the CALFED program a success. In Southern California alone, we are investing more than \$8 billion of our ratepayers' money to implement the Southern California Integrated Resources Plan, which in turn complements and helps meet the goals of the CALFED Program. Similarly, the voters of California have overwhelmingly approved more than \$6 billion in bonds to implement CALFED and related programs. Among the agricultural and urban public water supply agencies and in the business community, CALFED and S. 1097 enjoy virtually unanimous support.

But, the federal government has a significant responsibility to help implement CALFED as well. The federal agencies, including the Departments of Interior, Agriculture and Commerce, the U.S. Army Corps of Engineers and the Environmental Protection Agency, have been partners since 1994 in bipartisan efforts to develop the CALFED Bay-Delta program. The federal government operates the largest water supply project in California, the Central Valley Project, and it promulgates numerous regulations that constrain water supply projects throughout the state in order to protect the environment. By helping California better manage its water resources, S. 1097 provides security for all other western states. It further will provide

interstate and international benefits by increasing populations of salmon and other anadromous fish on the west coast and by improving habitat for migratory wildfowl on the Pacific Flyway. Madam Chairman, S. 1097 is good for California, it is good for the western states, and it is good for the nation. We urge that it be passed by this subcommittee and the full Senate as soon as practical.

CALFED IN HISTORICAL CONTEXT

S. 1097 would facilitate the implementation of measures both in the near-term and longer-term that will provide substantial water supply, water quality, and environmental benefits. To fully appreciate the significance of the CALFED Program that S. 1097 would implement, it is useful to consider the Program in historical context.

Barely a decade ago, the California water management system was in utter chaos. After decades of neglect and loss of extensive habitat, key fisheries were in decline. The environmental movement, responding to precipitous declines in fishery populations, had successfully sought regulatory protections to stop further loss of habitat and potentially damaging operational practices of the state's largest water projects, the federal Central Valley Project (CVP) and the State Water Project (SWP). Wild and Scenic Rivers legislation passed by the California legislature in 1972 removed from consideration on-stream dam sites in the north coast mountains of California—delivering a crippling blow to the 1957 California Water Plan that then provided the backbone strategy for meeting the long-term water needs of a growing state. Similarly, passage of federal and state Endangered Species Acts, the Clean Water Act, the Central Valley Project Improvement Act (CVPIA), and other legislation and regulations began constraining CVP and SWP project operations in an effort to protect fisheries.

If these actions were beneficial for fisheries and we believe that they were, they also posed formidable challenges for the numerous public agencies responsible for providing water supplies to the growing California economy. By the mid 1990s, more than 2 million acre-feet (MAF) of project yield had been reallocated from CVP and SWP contractors through these efforts to restore fisheries. For SWP contractors, such as Metropolitan, the reliability of project supplies was far short of the promise in our contracts. While the State had a contractual obligation to provide full "Table A" supplies to SWP contractors regardless of hydrology, the actual reliability of the SWP by the mid 1990s was far below contract commitments.

During wetter years, the SWP is still able to provide a fairly significant amount of water. Based on the historical record and modeling studies of the California Department of Water Resources, during the wetter half of water years, the SWP is able to supply 80 percent or more of full contract commitments. But, during the driest years—especially the driest third of years in the historical record—actions to protect the environment pose a substantial risk of water supply shortage for the California economy. Under worst-case circumstances (a repeat of water year 1977 or 1991), the SWP contractors expect to receive only a 20 percent supply. During an extended drought, such as occurred from 1987 to 1992, SWP supplies will average only about 40 percent of full contract amounts.

Inevitably, the prolonged drought of 1987 to 1992 combined with a paucity of adequate water management tools resulted in significant costs for both the California economy and environment. Toward the end of the drought, water rationing was widespread throughout California and corresponding economic hardships were significant. Similarly, the environment was hard-hit and fishery populations declined at alarming rates. Change was imperative. And we developed that change in large part through the CALFED Program and by making coordinated local investments in Southern California in conservation, recycling, storage, short-term water transfers, and desalination.

ELEMENTS OF THE CALFED BAY-DELTA PROGRAM

One of the key challenges of CALFED is to address this fundamental dilemma: How can we restore water supply reliability for the California economy and improve water quality while maintaining our commitment to continued restoration of the environment? The CALFED Record of Decision (ROD), in essence, provides a blue print for the accomplishment of this formidable task.

In many respects, Southern California provides a case study of the effectiveness of the diversified water management strategy embodied in the ROD. In 1991 a major reduction in SWP supplies resulted in mandatory rationing and economic disruption in Southern California. In sharp contrast, Metropolitan has maintained water supply reliability for the Southern California economy in recent years. Despite a reduction in SWP supplies in 2001 similar to 1991 and an abrupt decline in Colo-

rado River supplies this year as well, Metropolitan continued to meet all the demands of its customers. We have been able to stay reliable because today we rely on a diversified set of water management tools and not solely on our contracts for imported water supplies. Regional demands for imported water have been reduced as a result of major investments in demand management actions, including water conservation, recycling, and recovery of contaminated groundwater basins. We have also benefited from substantial investments in regional surface and groundwater storage. In both 2001 and 2003, Metropolitan was able to turn to voluntary water transfers from the Central Valley for additional affordable increases in supply.

All of these tools are consistent with the policy direction established in the ROD. If we are to maintain this success, we must act and act now to assure both near-term and longer-term success for the CALFED Program.

By the end of this calendar year, the California Bay-Delta Authority (CBDA) will have before it the first major implementation package of the CALFED Bay-Delta Program. Even before the beginning of the CALFED process, state and local agencies in California were investing vast sums in local resources to increase our commitment to conserve, reclaim and reuse, and desalinate water. But, these local resource measures alone cannot provide sufficient reliability for the California economy. The near-term CALFED implementation package will provide investments in the statewide water delivery system, which in combination with local resource investments can provide reliable water supplies for California. The near-term package contains elements that significantly protect water supply reliability, improve water quality, and provide for the continued restoration of California's environment. This package marks an enormous positive step in the management of California's water resources and environment.

To improve water supply reliability, the near-term package contains elements to improve through-Delta conveyance, including expanding the capacity of the SWP Banks Pumping Plant and constructing an intertie between the CVP and SWP systems. The package would also significantly improve operational efficiencies by better integrating CVP and SWP operations. These improvements, particularly improvements in through-Delta conveyance, will increase the ability to store water south-of-the-Delta during wet periods so that this water can be withdrawn in significant quantities during the driest years, thereby relieving dry-year pressure on the Delta and competition with other water users. In addition, these physical improvements add to the ability to transport conserved water from voluntary sellers upstream of the Delta to buyers seeking additional supplies south of the Delta in the increasingly effective California water market consistent with the policy direction of CALFED.

To improve water quality, the near-term package is expected to include several project elements jointly recommended by an historic coalition of Delta interests and CVP and SWP contractors. These elements include enforceable standards to protect water heights, depths, and quality for Delta irrigators; installation of permanent, operable barriers and other physical improvements in the central and south Delta; and specific actions to improve Delta water quality for in-Delta and export water users alike, such as source water quality improvements at Frank's Tract in the central Delta, agricultural drainage management in the Delta and the San Joaquin Valley, and steps to re-circulate water or otherwise increase flows in the San Joaquin River to improve quality in the South Delta and help resolve dissolved oxygen problems in the deep-water ship channel near Stockton.

To protect and restore the environment, the near-term package will include a long-term Environmental Water Account (EWA). The EWA is one of the most innovative resource management tools developed in the CALFED Program. The EWA relies on market-driven approaches to provide water flows for environmental protection and restoration while providing regulatory certainty for water users. Based on the best available science, the CALFED near-term implementation package will provide EWA with adequate assets and financing to assure the continued restoration of fisheries while we simultaneously implement measures to increase water supply reliability and enhance water quality.

The near-term package to be implemented in Phase I of the CALFED Bay-Delta Program represents the most significant step to improve the statewide water management system in a generation. But, over the longer term, many challenges remain. We still must complete studies of additional surface storage facilities and move toward implementation of those projects that make economic and environmental sense. We must take further steps to improve water quality for both in-Delta and export water users. We must also assure the long-term financing and success of the CALFED environmental restoration, Delta levees, and water use efficiency programs.

THE ROLE OF THE CALIFORNIA BAY-DELTA AUTHORIZATION ACT

Senator Feinstein's proposed S. 1097, the California Bay-Delta Authorization Act (Act), provides the needed federal participation for the success of the CALFED Program. The Act approves the CALFED ROD as the basic policy framework for future state-federal cooperation on California water management. It authorizes the federal agencies to participate as voting members in the California Bay-Delta Authority, the governance mechanism for CALFED created by the California legislature. Equally important, the Act provides federal resources for the implementation of the near-term CALFED implementation package and for the longer-term success of the Program.

For the near-term implementation package, the Act provides modest funding for increasing the capacity of the SWP Banks pumping plant, constructing the CVP-SWP intertie, improving agricultural drainage management, modifying Frank's Tract and other source water quality actions, and implementing re-circulation projects to increase flows in the lower San Joaquin River. Over the longer-term, the Act provides for a federal cost share to complete studies of CALFED surface storage facilities, maintain water use efficiency performance, continue environmental restoration activities, reconstruct and enhance Delta levees, and, importantly, assure that state-of-the-art science supports all CALFED decisions and activities. The bottom line is that the Act has been carefully crafted through a bi-partisan effort to be consistent with the balance reflected in the CALFED ROD and its implementation will assure continued improvement in water supply, water quality, and environmental restoration to the benefit of California, the western states, and the nation.

THE BENEFICIARY PAYS PRINCIPLE

Finally, I would like to close this testimony with some observations regarding the beneficiary pays principle. Metropolitan is a strong proponent of this principle. The ultimate success of a major, complex, public process like the CALFED Bay-Delta rests in no small way on perceptions of fairness that those who benefit from the implementation of program actions help pay for those actions in proportion to the benefits received. An important corollary to this principle is that those who pay should be assured that they will receive commensurate benefits so they will participate in the cost sharing required to implement program actions. But, we are also concerned that some will twist the beneficiary pays principle to undermine support for S. 1097.

It is extremely important to recognize that local agencies and the state of California are investing billions of dollars to assure the success of the CALFED Program. In Southern California, Metropolitan and its member agencies are in the process of investing more than \$8 billion to implement the Southern California Integrated Resources Program. We have set a course for our ratepayers to pay \$2 billion to reclaim, reuse, and desalinate brackish water and ocean water; another nearly \$1 billion to implement water conservation measures; \$2 billion to implement the QSA; and \$3 billion to construct more than 2.5 million acre-feet of additional regional surface and groundwater storage capacity. Similarly, the California voters have overwhelmingly approved more than \$6 billion in public bonds to finance CALFED and related activities: \$1 billion in Proposition 204 in 1996 primarily for environmental restoration and another \$2 billion in Proposition 13 in 2000 and more than \$3 billion in Proposition 50 in 2002 for water supply, water quality, and other CALFED related projects.

Unfortunately, the federal share of financing CALFED has lagged considerably behind the local and state shares. To date, based on CALFED data, during the program's first three years, the federal government accounts for only about 9 percent of CALFED funds and this share is rapidly declining each year. Metropolitan believes that S. 1097 provides a reasonable and fair federal share of CALFED financing for the next few years. S. 1097 helps fund the near-term implementation package that will provide considerable benefits at a very modest cost. It provides funds for long-term efforts to improve water efficiency, restore the environment, and improve watersheds. Many of these publicly beneficial activities cannot pencil out based solely on local costs and benefits and federal funds are essential for their implementation.

With regard to larger infrastructure investments, such as additional surface storage, S. 1097 provides \$102 million primarily to complete feasibility studies. We submit that this is a sound approach. The CALFED ROD concludes that additional surface and groundwater storage capacity is required to maintain balance between water supply, water quality, and the environment over the long-term. However, until feasibility studies are completed, beneficiaries are identified, and cost sharing agreements are developed, it is not possible to determine which specific projects should proceed and how. S. 1097 makes no final commitment and does not provide

sufficient funds to construct any project, it merely provides the resources to answer key questions so that we can determine in the future how to best add to California's water storage capacity and meet our water quality and environmental goals.

Given the benefits to the federal CVP project, the contributions of federal regulations to the problems being remedied, the interstate and international benefits of some CALFED actions, and the general public benefits of other CALFED actions, Metropolitan believes that S. 1097 provides an effective and fiscally appropriate vehicle to enable California to manage water resources in a manner that will provide long-term stability in the Western United States. We commend Senator Feinstein for her leadership in introducing S. 1097.

Madam Chairman, this concludes my testimony. I would be happy to answer any questions that you or the members of the subcommittee may have.

Senator MURKOWSKI. Thank you.

Mr. Guy, your testimony, please.

STATEMENT OF DAVID J. GUY, EXECUTIVE DIRECTOR, NORTHERN CALIFORNIA WATER ASSOCIATION, SACRAMENTO, CA

Mr. GUY. I thank you, Madam Chairman, Senator Feinstein.

Let me also join the chorus in admiring the work that you all have done, and particularly the patience that you've had, Senator Feinstein. But I think, more important than the patience, we sure admire your perseverance and your determination, and please retain those characteristics, because the California water community needs you, and California as a whole needs you.

I represent Northern California Water Association. It's the area north of the Bay-Delta. It's the area—it's largely a rural area, but, of course, a large bulk of the water supply in California comes from this particular area. This is not just a normal rural area, it's a combination of agriculture, it is integrated with a series of at least five national wildlife refuges, many State wildlife management areas.

You have what are now considered some of the world-renowned salmon restoration projects in this region. And this is all integrated into a water-management program that I think is very important, and I believe that S. 1097 will help facilitate that and continue the progress that we have made in the Sacramento Valley to advance this integrated program. And for that reason, we support S. 1097 enthusiastically.

This integrated program will not only meet the needs in the local rural areas—again, for farms, for refuges, for the fish—but it will also, in our view, if we can manage the resource properly, it can also meet needs in the Bay-Delta as well as needs in the rest of the State. And this has led, this integrated program, to several partnerships that I think are worth noting.

I noted, Senator Feinstein, one of your three critical points was partnerships, and you mentioned the State and Federal partnerships, and those are, needless to say, very important, but there's also a series of local partnerships that have evolved that I think are really giving Calfed a large boost, and one of those, most notably, is the Sacramento Valley Water Management Program, which resolved the so-called Phase 8 proceedings before the Bay-Delta.

I have several of my partners here at the table today that have exerted tremendous leadership to make this happen, and it's really the first time in the State of California, I believe, that North and South have worked together to, again, meet these ideals of meeting the water needs of all of the different factions. It's also important

because it's a rural/urban partnership, which is very difficult. And we are working very well together, and there's a lot of work to be done, but we have started to do that. And I believe that Calfed, the Bay-Delta Authority, and S. 1097 are all very important in helping us advance those partnerships, and vice versa. So we sure laud the bill.

And, of course, all of the things that are in your bill, whether it be water conservation, water-use efficiency, whether it be the fish-passage improvements, the water-quality improvements, and then, of course, surface storage, including Sites Reservoir and enlarged Shasta, we believe, are all critical components to advancing, not only this integrated program, but the partnerships that are so critical to making this process work. So, again, we think the bill is very good in that regard.

I will also say that I believe the balance feature that you mentioned, I believe, is really the key to making this program work; and not only balance across the different program areas, as mentioned, but I think the provision in the bill that talks about balance across geographic regions is very important, because water tends to be very parochial in nature. People look at their own particular region. And it doesn't matter, in some ways, if all the program elements are balanced, if a particular region does not feel that they are not being benefitted. And I think that that is a real key provision in this particular bill.

With that said, I do think that there are some coordination issues that could be improved upon. I think Tom Birmingham touched on some of those, but I think improved coordination amongst the Federal and State agencies, as well as a recognition that the Calfed Program is a whole and must proceed as a whole, I think, is really important as we move forward.

So I will close in just saying, again, we support S. 1097, congratulate you and the continued efforts of Senator Feinstein and also Congressman Calvert across the building, and look forward to working with you two to make it work.

[The prepared statement of Mr. Guy follows:]

PREPARED STATEMENT OF DAVID J. GUY, EXECUTIVE DIRECTOR,
NORTHERN CALIFORNIA WATER ASSOCIATION, SACRAMENTO, CA

Dear Chairman and members of the Subcommittee, my name is David Guy. I am the Executive Director of the Northern California Water Association (NCWA). NCWA supports S. 1097 and strongly believes that, with the recommendations described below, this legislation will help provide water and environmental security for Northern California and the rest of the state.

NCWA is a geographically diverse organization, extending from California's Coast Range to the Sierra Nevada foothills, and nearly 180 miles from Redding to Sacramento. Our members rely on the waters of the Sacramento, Feather, Yuba and American Rivers, smaller tributaries and groundwater to irrigate nearly 850,000 acres that produce every type of food and fiber grown in the region. Many of our members also provide water supplies to state and federal wildlife refuges, and much of this land serves as important seasonal wetlands for migrating waterfowl, shorebirds and other wildlife.

We welcome the opportunity to provide the Northern California perspective on water supply security and to present both the opportunities and challenges we now face. The Subcommittee's interest in California water security is appropriate and very timely given the importance of a successful resolution to the environmental and water supply problems in the Sacramento San Joaquin River Delta and San Francisco Bay (Bay-Delta). The Bay-Delta is a tremendous economic and environmental

resource to California and the nation, and there is much at stake in how we implement the numerous ecosystem restoration and water management actions.

Northern California water users have committed to help improve water supply reliability, water quality and environmental benefits. The Sacramento Valley's initiative and effort to help protect salmon and other aquatic species is unprecedented and is now recognized as one of the most exciting and progressive voluntary salmon restoration efforts in the United States. Today, more than a dozen NCWA members, representing over 500,000 acres of irrigable land, have either completed or will soon be constructing screens to prevent fish entrainment at their diversions. Many NCWA members have also initiated far-reaching efforts to refurbish fish ladders, construct siphons, remove dams, create habitat conservation plans and implement other habitat improvement projects to enhance the environment, while at the same time improving water supply reliability.

Additionally, NCWA and the Northern California water users have embarked on an integrated water management program that has broad support from water suppliers and local governments throughout Northern California. This integrated program includes these fish passage improvements (fish screens and siphons), ground-water management, evaluation of the Sites off-stream reservoir, flood protection, water use efficiency programs, potential expanded storage in Lake Shasta, intra-regional water transfers and exchanges, and watershed management.

During the past year this integrated program led to an unprecedented water rights settlement among water users throughout California. This settlement, now known as the *Sacramento Valley Water Management Program*, and the ensuing integrated water management program, avoided the extremely contentious Phase 8 Bay-Delta water rights proceedings before the State Water Resources Control Board (SWRCB). The parties to the agreement include NCWA, the Bureau of Reclamation (BOR), the Department of Water Resources (DWR), the federal contractors in the San Luis and Delta-Mendota Water Authority, the State Water Contractors, and Contra Costa Water District. This proceeding would have pitted these parties from throughout the state against each other. This integrated program will now serve as the heart of a regional strategy for the Sacramento Valley.

The *Sacramento Valley Water Management Program* and the integrated water management program focus on meeting the water supply demands within the Sacramento Valley during all year types, both now and into the future. Northern California water users believe that, once the full demands within the Sacramento Valley are met, this integrated program will help make water supplies available for use in and beyond the Bay-Delta to meet water quality standards, and provide for export water users in the San Joaquin Valley, Southern California, the Central Coast, and as assets for the Environmental Water Account (EWA) and other environmental programs.

Although there are many components in the integrated water management plan for the Sacramento Valley, the components involving surface storage draw the most attention and deserve further elaboration. Sites reservoir and enlarged Shasta are important parts of water management in the Sacramento Valley and are critical to addressing and solving CALFED problems. We believe that a great mistake will be made and an opportunity will be lost if the feasibility of a storage project (like Sites) is viewed in a traditional fashion, with the "yield" of the reservoir merely divided up among a pre-identified group of "beneficiaries."

We have an opportunity to view Sites in a manner different from the traditional storage reservoir. This stems, in part, from its location within or adjacent to the Glenn-Colusa Irrigation District (GCID) and districts within the Tehama-Colusa Canal Authority (TCCA). Initially, this allows the reservoir to be filled through the conveyance of water into the reservoir pursuant to a wheeling agreement with GCID for use of GCID's Main Canal and/or potentially through a wheeling agreement with the BOR or others for use of the Tehama-Colusa Canal.

In addition, how one operates Sites should take into consideration opportunities presented by the fact that it can be integrated with local interests within the Sacramento Valley so that it is operated and managed in conjunction with local interests' direct diversion water rights, other surface water resources, including storage rights within Shasta Reservoir, and groundwater resources. Proceeding with integrated water management will provide direct and indirect benefits. These direct and indirect benefits include securing independent, reliable and certain supplies of irrigation, municipal and industrial (M&I) and environmental water of suitable quality for reasonable beneficial uses by local interests within the Sacramento Valley. They will also provide benefits to the environment, including improvements in Delta water quality, the availability of water for the EWA, in management flexibility that will be made available in the Sacramento Valley, and a more dependable water supply for water users within the Delta as well as water users south of the Delta.

The ability to operate in a flexible manner to maximize system-wide benefits is not unique to GCID or the TCCA; it is a shared ability that could be exercised by other entities within the Sacramento Valley.

From the very beginning of the CALFED process, indeed, before the Record of Decision (ROD) was issued, Northern California interests have been fairly clear that, in general, we were not responsible, in fact or in law, for the problems that exist in the Bay-Delta. In our view, those problems were created by others. As a consequence, we can only support solutions that solve problems in a manner that does not harm Northern California interests. We cannot support and will oppose solutions that seek to solve problems created by others at the expense of Northern California.

I hasten to add that from the onset, Northern California has nonetheless been willing to work with CALFED to seek solutions that meet the test of no redirected adverse impacts while advancing substantially actions and programs that would improve the Bay-Delta. We are still willing to participate in these programs and, in fact, have initiated actions that, when completed, will substantially advance the CALFED goals.

I have read and am familiar with S. 1097 as well as with the CALFED ROD. I have followed CALFED actions and activities closely since August 28, 2000. With the foregoing in mind, I first offer comments on the program activities in S. 1097 followed by comments and suggestions on the administration and management of the CALFED Bay-Delta Program.

I. Integrated Water Management (§ 3(c) (3)(F).)

As discussed above, Northern California has been at the forefront of integrated water management and supports the provisions of S. 1097 to advance this cause. This integrated program for the Sacramento Valley will help “carry out Stage 1 of the Record of Decision.”

II. Specific Program Activities

As previously mentioned, the integrated program for the Sacramento Valley contains several important components that will help advance the CALFED Bay-Delta Program. This includes:

- Fish Passage Improvements (§ 3(c)(3)(G)(iii).)
- Proposed Sites reservoir and enlarged Shasta (§ 3(c)(A)(ii)(I).)
- Water Use Efficiency and System Improvement Projects (§ 3(c)(3)(c).)
- Water Quality Improvements (§ 3(c)(3)(I))
- Water Transfers (§ 3(c)(3)(D).)
- Enlarged Shasta (§ 3(c)(A)(i)(I).)
- Watershed Management (§ 3(c)(3)(H).)

III. Administration and Management

With respect to the administration and management of the CALFED program, we offer the following suggestions.

A. Balance (§ 5(b); 3(b))—The concept of “balance” is critical to a successful CALFED. S. 1097 deals with this issue by first requiring the Secretary, in cooperation with the Governor, to annually certify that the Program is “progressing in a balanced manner which allows all program elements to be advanced.” Without these types of procedures there is little question in my mind that certain parts of the program (i.e., water supply storage and conveyance projects) will lag behind other CALFED programs and projects and, indeed, may never be completed. In addition to program balance, the provision in subpart (b)(9) is critical to assure that there is “progress in achieving benefits in all geographic regions covered by the Program.”

B. Administration of Activities—There has been a fairly large disconnect between the whole purpose and need for CALFED and the way regulatory agencies approach their missions.

The CALFED program is multi-dimensional in nature and not only evaluates, on a programmatic level, numerous alternative approaches but, in light of the significant water related problems at issue, in fact incorporates multiple elements which in the normal context might be considered, in themselves, as alternatives, one to the other. In other words, the problems dealt with by CALFED are so significant that looking at one option as if it were in opposition to another is counter-productive to meeting CALFED goals.

While all of the planning and actions associated with CALFED contemplate this integrated approach toward water management, regulatory agencies, particularly the United States Army Corps of Engineers and the Environmental Protection Agency, adhere to an overly rigid application of, for example, the Clean Water Act section 404(b)(1) alternatives analysis. This requires one to view each of the

CALFED potential solutions not as an integrated whole, but rather as alternatives, one to the other. As a consequence, the ability to maximize benefits through full-integrated water management is lost in favor of rigid analyses developed to deal with situations dissimilar to CALFED.

The law itself does not require this rigid application of regulatory standards. However, it probably requires specific Congressional direction and guidance (contemplated in existing law) to make certain that regulatory review occurs in an appropriate fashion. Section 3(b) alludes to this quest for a fully integrated water management solution that will not be hampered by an overly rigid regulatory mind-set. This goal might be further advanced through additional language in Section 4 such as the following:

“Pursuant to the provisions of 33 U.S.C. § 1344(r), information of the effects, if any, of a discharge of dredged or fill material, including consideration of the guidelines developed under 33 U.S.C. § 1344(b)(1), will be included in the environmental impact statement undertaken pursuant to the National Environmental Policy Act (NEPA) for any CALFED project or program requiring federal authorization and such environmental impact statement will be submitted to Congress prior to the authorization of the project or the appropriation of funds for the construction of the project.”

C. Agency Coordination (Section 4(a))—A fundamental problem that was identified early in the San Francisco Bay-Delta Estuary process was the multiple statutory, regulatory and agency coverage (overlap) of critical issues. Indeed, the whole concept of CALFED was borne out of the unintended adverse consequences of uncoordinated activities conducted by multiple agencies seeking to address the same problem.

In a critical way CALFED has, in fact, worked to focus attention on a coordinated set of goals and actions. Nonetheless, an important element still must be addressed. While agencies work, in part, within CALFED, at critical times they remove themselves from that process and retreat to their individual regulatory processes. Thus, critical CALFED programs and projects are still required to scale multiple, duplicative, regulatory processes which add costs and time to that which would otherwise be necessary and which consequently challenge the feasibility of any proposed project or program.

The solution, we believe, is not in asking any regulatory body to abrogate its responsibility to another or in the modification of any underlying statutory program. Instead, we propose a “regulatory streamlining” or “regulatory coordination” process in which all project elements or a program are evaluated at one time and, in this context, all regulatory requirements are also made known (along with mitigation measures) at one time. In this manner duplicative and/or inconsistent regulatory mandates can be immediately identified, evaluated and dealt with; and a project or program proponent can understand, at that time, what its total requirements/obligations will be. In this way intelligent decisions on how to proceed or how not to proceed can be made with the knowledge of all relevant facts.

This process is not unique. The Federal Power Act, 16 U.S.C. § 791a et seq., provides for similar procedures associated with the licensing under that Act. Regulatory and other relevant agencies, under the provisions of the Electric Consumers Protection Act (ECPA) are required to notify the Federal Energy Regulatory Commission (FERC) and the project proponents of all of the regulatory conditions that must be included within a license. FERC, in turn, must include in any license issued under the Federal Power Act appropriate conditions based upon what is provided by those other regulatory agencies. See 16 U.S.C. § 805j(1); *Mine Reclamation Corporation, et al. v. Federal Energy Regulatory Commission, et al.*, 30 Fed.3d 1519, 1525 (D.C. Cir. 1994). There is no absolute veto of any regulatory requirement, but merely an “all cards up” understanding of what will need to be done in order to proceed with a project.¹ Not only does this save a great deal of time, but it also allows the project proponents to make an intelligent business decision about whether and how to proceed. *Id.*

To accomplish these purposes, we propose language such as the following to add to § 4(a):

“The Secretary working with the Governor shall develop a regulatory coordination and streamlining program in which all permits, licenses or other approvals associated with the permitting approval of projects under this Act will take place. This regulatory coordination or streamlining program shall insure that all Federal and California agencies’ respective regulatory programs will take place at one time and

¹ 16 U.S.C. § 803j(2) does provide FERC with a process and criteria that it must follow if it determines that recommended conditions will be inconsistent with the purposes and requirements of the Act.

that they will be coordinated in a manner that reduces or eliminates process- or substantive-related duplication and inconsistencies, thereby reducing costs and time that would otherwise be required; Provided, that nothing herein is intended nor should it be construed to affect the substantive regulatory requirements that may be applicable."

As in many situations, the problem faced by project proponents is not the need to comply with appropriate environmental obligations but the problem created by multiple, duplicate or inconsistent regulations. This problem is particularly troublesome in a situation as complex as the one presented by CALFED. The type of language proposed here, while not fully addressing all of the potential problems, will go a long way in remedying the situation that otherwise exists.

Thank you for the opportunity to testify today on the CALFED program and the important water issues facing California.

Senator MURKOWSKI. Thank you.

I appreciate the comments from each of you on the panel here today, and thank you for joining us here at the committee.

I have individual questions that are more specific to each of you that will be presented so that you can respond in writing. But just a few general questions, and I'll just present them to you as a panel, and if you can give me your very brief comments.

But recognizing that you are the panel of stakeholders and from certainly different interests, whether they be metropolitan or rural or north or south, I'd like to hear just very briefly and very succinctly what aspects of this legislation are most important to your specific organization.

Mr. Wright, let's put you on the hot-seat first.

Mr. WRIGHT. Sure. Speaking from the perspective of the agencies themselves, the number one issue is to cement the State/Federal partnership and to avoid a perception that this is a State-driven program and that the agencies aren't a hundred percent with us in putting this thing together.

Money's important, absolutely. But first comes the commitment to the program itself. So that's number one.

Senator MURKOWSKI. Thank you.

Ms. McPeak.

Ms. MCPeAK. The business community would echo that. Without the Federal Government being a full partner, there is continuing uncertainty and the lack of coalescing of all the agencies working together. That spells probably unreliability in our future water supply. The business community fully embraces all components of Calfed. We know we have to move on all of them together. That will be possible only if all of the Federal and State agencies are at the table. Federal agencies need to have the enthusiastic endorsement, reaffirmation of Congress.

Senator MURKOWSKI. Thank you.

Mr. Graff.

Mr. GRAFF. I guess I would answer your question this way, that the matter that is of most concern to us is that additional commitments of water to users, particularly not paid for by users, not come at the expense of the environments that have just recently begun to respond to the benefits of congressional legislation and other actions past. Let me just say that those environments should include the Trinity River, which is in my written remarks, but I did not mention in my oral testimony.

Senator MURKOWSKI. Thank you.

Mr. Birmingham.

Mr. BIRMINGHAM. The issue that has been critical to agricultural water districts on the west side of the San Joaquin Valley is balanced implementation of the Calfed Program. There are three provisions in S. 1097 that will promote balanced implementation of the program, in fact, will mandate it. First, the Secretary is required to annually certify—the Secretary of the Interior is required to annually certify that the programs are moving forward in a balanced manner; and if not, revise the schedule for implementation. Second, S. 1097 contains a provision that requires that the Secretary report on progress being made on each of the elements of the program, including water-supply reliability, water-quality improvement, levy restoration, and ecosystem restoration.

And then, finally, the provisions of the bill that prescribe how much will be spent for each program, how much will be authorized for each program, will ensure that as the program moves forward, it will do so in a balanced manner, each element of the program being linked to others. And so I think that those are the three provisions of the bill that, from our perspective, are most important.

Senator MURKOWSKI. Thank you.

Mr. Gastelum.

Mr. GASTELUM. As I've looked at this bill on a number of occasions, I've thought, well, there might some improvements here or there that I would like to make from the perspective of urban southern California. But we are very pleased with this bill, because it represent progress. It represents the principles that we most want to see happen in California—cooperation, sound science, interagency governmental cooperation.

What we like, in terms of what would happen for the good in southern California particularly, is the water-quality improvements that will come with the conveyance actions, with the science-based decisions on moving water at particular times of the year that has less impact on the environment and allows us to move water into storage. All of these things are possible under Calfed, and, in particular, this legislation.

Senator MURKOWSKI. Mr. Guy.

Mr. GUY. I believe the most important aspect of the bill is the integrated nature of the components, and I think it's important that the bill spells out all of the different components in enough detail that people in California can see exactly what is expected of this program. And I think it's that integrated nature of all the separate components, whether it be water-use efficiency, surface storage, off-stream storage, whether it be fish-passage improvements, water-quality improvements, all of that in one package, and making sure that there's balance across those areas and across the geographic regions, is important to the bill.

Senator MURKOWSKI. I appreciate the distilling in at least a couple of sentences, or maybe a couple of paragraphs or less, so I'm going to ask you one more.

You've told me what you like best about it. In your opinion, is there anything that needs to be included, added? Mr. Gastelum, you've pretty much said you like it as it is. But in the opinion—in your opinion or that of the organizations that you represent, what needs to be added to make it work for your perspective, for your group of stakeholders?

Mr. Guy.

Mr. GUY. Well, my written comments, which I hope are in the record, spell out a couple of suggestions on that, and I think they really get categorized with respect to regulatory and agency coordination. And I think several fairly simple provisions that, again, recognize the Calfed, as a whole, that parts of the program are not alternatives to other parts of the program, and that the legislation recognize that the Calfed Program is a whole and that all of the programs need to be implemented simultaneously, together—or I guess that's redundant—but together in an integrated fashion. I think that some language would be very helpful there, and it would not be anything significant.

Senator MURKOWSKI. Thank you.

Mr. Gastelum, want to add anything?

Mr. GASTELUM. I would. I think that if we could add anything more to this bill, it would be to provide perhaps stronger and clearer direction to the Federal agencies to participate in this process. So, money aside, if we could get their full attention and their decision-making process in coordination with the State, that would be something to be desired.

Senator MURKOWSKI. Thank you.

Mr. Birmingham.

Mr. BIRMINGHAM. I don't disagree with what Mr. Gastelum stated, although I think that one of the questions that has been raised is, why do we need Calfed authorization if the agencies are already authorized to engage in most of the programs that are described? And I think that what Mr. Gastelum just stated is the reason that we need to have a specific Calfed authorization.

Frankly, I don't think that there is anything that I would suggest should be added. In drafting the bill, Senator Feinstein and her staff were diligent about reaching out to every interest group in the California water community and engaging with them to make sure that their concerns were addressed. I don't think that there's anything in this—I think I can safely say that there are things in the Calfed Program that everyone—that somebody would dislike—there's something in there for everybody to dislike, but there's also something in there for everybody to love.

And I think that's part of the beauty of the program. And the beauty of this particular bill is that it is the product of a tremendous effort to ensure that the interests of all of the communities were addressed in its crafting.

Senator MURKOWSKI. Thank you.

Mr. Graff, do you agree?

Mr. GRAFF. No. I don't think I do. I think I'm going to go back to testimony of Mr. Raley and just get right to the guts of it. I mean, his first major point here in his statement of the administration's concerns is to say, "As mentioned, appropriations are unlikely to approve—to approach the \$880 million envisioned for stage one. Balanced in the program can only be achieved with a realistic expectation of Calfed appropriations."

And in light of a scaled-back program, both in terms of Federal dollars, and even more so in terms of user dollars, we need to figure out, before we go forward, whether the additional commitments of water that the contractors agreed to at Napa are really going to

happen at the expense of the environment. I think that's the question we have to answer first.

Senator MURKOWSKI. Ms. McPeak.

Ms. MCPeAK. Unreliability and uncertainty are the death knell for investment. So if we're looking to economic recovery and continuing to retain the employers in California, and in this country, as a matter of fact, then there's got to be certainty within a regulatory framework. And we would never second-guess Senator Feinstein or this committee on getting to the bill. It's probably based on all that we know, as good as it can possibly be.

Going back a few years, when I sat and we, at the Bay-Delta Advisory Committee, advised on a governance structure for Calfed, there were a few principles that we strongly advocated and that the business community wanted to see, and that is that everybody had to be at the table. If you've got some agencies who have the ability to absent themselves and do not understand that it is the policy and the presumption of the Federal Government that they will all work together and work in partnership with the States agencies, then that just is greater uncertainty and unreliability in that regulatory framework. It will be a dampening force on or factor for attracting investment in California.

Therefore, what we think would be very salutary, if it's possible, is, as Mr. Gastelum has said, strengthen the language as a directive and imperative to all of those Federal agencies, that they are to participate in full faith, at the highest level, continuously, introduce a sense of urgency about implementation, and that there must be consultation among them in any—before they take independent action under their authorities.

In other words, that they've got authority to exercise, and it's going to impact any aspect of the Calfed implementation program, that they must, in fact, consult one another around that table before taking independent action. I cannot tell you how beneficial that would be, nor how much of a shift in paradigm as to how the business community usually experiences government.

There is no substitute for leadership. That's what this bill is about. It's about creating the momentum that Senator Feinstein talked about and registering, very loud and clear, that the Federal Government is a full partner in the Calfed implementation. It's a new era.

Senator MURKOWSKI. Mr. Wright.

Mr. WRIGHT. I'll just say briefly, because, of course, at the program we don't take specific positions on bills; we leave that to our State and Federal administrations. I should add, though, that we did, at the request of Senator Feinstein, work very closely with her staff and other members to make sure that the bill was fully consistent with the Calfed plan.

Senator MURKOWSKI. I appreciate your responses.

Senator FEINSTEIN.

Senator FEINSTEIN. Thanks very much, Madam Chairman. I think those were very good questions.

Mr. Graff, whom I've known for at least 30 years, as well—matter of fact, I knew him when he had a little more hair on the top.

Mr. GRAFF. That's a long time ago.

Senator FEINSTEIN. On the issue of beneficiary pays, I would call the attention to page 34, the Record of Decision, and read one sentence, "A fundamental philosophy of the Calfed Program is that costs should, to the extent possible, be paid by the beneficiaries of the program actions."

We have replicated this in the bill, on page 19—actually, beginning on page 18—with this language, "Any feasibility studies"—because most of their concern revolves around the cost of the storage—"Any feasibility studies completed for storage projects as a result of this act shall include identification of project benefits and beneficiaries and a cost-allocation plan consistent with the beneficiaries pay provisions of the Record Of Decision."

There is beneficiaries-pay language in this bill. Obviously, we can't determine what it is. Calfed would have to do that at a later time. But that is the full intent, and I would hope that the record—and I know the record will reflect that.

With respect to the Napa River issue, Mr. Wright, let me ask you this question. Mr. Graff claims that the Napa proposal will result in about one million acre-feet of water exported from the delta. It's important to note, at the outset, that the Napa meetings produced only a proposal, as I understand it, for coordinated system operation, and the appropriate agencies are making decisions on delta pumping levels through a separate process.

Besides the caveat that no final decisions have been made yet, didn't the State Department of Water Resources estimate that—just that week, that only about 250,000 acre-feet of water would be exported from the delta? And didn't the State give this estimate at an Assembly Parks and Wildlife Committee hearing?

Mr. WRIGHT. That's correct, Senator. And in addition to that, of course, as you, yourself, said, it's one part of a comprehensive package and will not move forward until the whole package does.

Senator FEINSTEIN. Good. So I'm glad we settled that one.

Now, you know, one of the things that I think we are all thinking about is the amount, Madam Chairman. There is actually a lot of money in the base, before we even start on the amount. So the \$880 million really is not reflective of net new Federal dollars. And I think one key might be, how do we tailor the language so that it only includes the Federal share? And what should that be? Do you have any comment on that, Mr. Wright?

Mr. WRIGHT. Well, let me say again, in response to Interior's comments, it is true, as you, yourself, stated it, that the vast majority of things that we do at the program is to coordinate agency programs that are already authorized. It is a coordination effort. There are a handful of things that Assistant Secretary Raley mentioned that lack authorization, but most of what we need to do is authorized.

Having said that, though, you've heard from just about all the witnesses here on the importance of balance and the importance of a comprehensive program. So if you were to limit the bill just to those very small handful of things that aren't authorized, then you're not going to reassure folks here that you're authorizing a balanced, comprehensive plan.

Somehow you're going to have to strike a balance between having the bill be comprehensive enough to send that message, but not

imply, from a financial perspective, that you're authorizing a massive new program, because you're not. You're authorizing the coordination—

Senator FEINSTEIN. Yeah, well, let me stop you here. We can't appropriate any money—and we've been doing it, and they're not going to do it anymore—without an authorization. That's why the authorization connected to a dollar amount becomes so important.

Mr. WRIGHT. Right.

Senator FEINSTEIN. Now, if you could tell me—because we worked the \$880 million. You know, this didn't come out of the sky. It really came actually, from your suggestions. Can you make any suggestions today based on the fact that the State, through bond funds, actually has a lot of the funding that it would require to be used, if it's possible to reduce that amount and still carry out, in the balanced way, the program we contemplate?

Mr. WRIGHT. We will—as Bennett said earlier—we will work with him over the next several weeks. I don't want to get out in front of either the Federal or State side on a budgetary question. But it's obviously a legitimate question, and we need to work with both of them to give you that answer.

Senator FEINSTEIN. If it's possible for you to stay and do it now—you know, the session's going on, and I think we need to get a bill, and I think we need to have closure on that amount so that it is lean and mean, with respect to—and we all know the Federal deficit situation—but that there is a commitment to follow through on it.

Mr. WRIGHT. I would be happy to talk to Interior and the new administration about doing that.

Senator FEINSTEIN. Mr. Raley said that he'd be available effective next week. If you could possibly make yourself available—

Mr. WRIGHT. I can be available whenever you need me to. That would not be a problem.

Senator FEINSTEIN. Okay, that would be terrific.

Mr. Gastelum, you're very smart, you run a huge water district. Focus for a minute on the beneficiary-pays principle. And you mentioned it in your comments. Can you elaborate more on how you think this principle could work for Calfed?

Mr. GASTELUM. As you correctly pointed out, this is embedded in Calfed today. There is no formula that has been established in Calfed or elsewhere on beneficiaries pay. So what we have, I believe, in California, is a commitment that we're going to figure that out. We believe that it relates to cost share, or something that you would relate to on the Federal level in a very real way and something you do all the time, you expect cost-sharing on a local level.

So we are expecting, in southern California, that in any particular project there will be some share of Federal dollars in the Calfed program, some share of State dollars—and that may be general fund, it could be bond funds—and some share of local, and that the locals, as beneficiaries, will be expected, however, they finance it locally, to contribute a portion.

What the formula is on how you do that will end up being a part of the process. I'd like to say that we had a formula. We'll probably be making some law, if you—or setting some precedents in Cali-

for California that will be useful for others who are confronting this, but we are clearly committed to do that in California.

Senator FEINSTEIN. So let me—and let's take one of the storage projects for example—let's just take the Shasta Raise. And, Mr. Wright and others, you might want to chime in. I would assume that if that proves to be cost-effective and feasible, and meets environmental NEPA concerns, that there will then be an allocation of cost also that will go down through the system for all those that draw water out of that Shasta Dam. Is that a fair assumption to make?

Mr. GASTELUM. I think that's right. And in southern California's case, as an example, if there was an increment of water available that could be allocated to southern California, and southern California was unwilling to pay for that water, additional water supply, as beneficiaries, we would not expect to receive that water. But if we were asking to receive it, I would expect we'd pay for our allocated share.

Senator FEINSTEIN. Anybody else want to comment on that?

Mr. BIRMINGHAM. Well, the example that you used is raising Sites. In fact, the—I'm sorry, raising Shasta—in fact, reclamation law would require an analysis of the costs and beneficiaries, and then allocate the costs of that particular project. We anticipate that, for other storage facilities, including the Sites or storage on—

Senator FEINSTEIN. Upper San Joaquin?

Mr. BIRMINGHAM [continuing]. On Upper San Joaquin, there would be a similar analysis.

Mr. GRAFF. Senator, let me—I would have said nothing, because I think you questions about beneficiary-pays are very helpful to finally pinning down some of the specifics on this that have been missing for so long. But when Mr. Birmingham brings up reclamation law, one of the big problems to date, the reason we are in these enormous difficulties, is that as a result of past reclamation law, both legal compliance and not, we have had users who have paid minimally on Federal and—paid back minimally on Federal investment, and we're not in an era where we can continue that. If we use the old reclamation-law formulas to build massively expensive projects, basically that's the taxpayers paying, not the users paying.

Mr. BIRMINGHAM. And I could respond to that by observing that under a public law enacted in 1986, all of the capital costs of the Central Valley Project must be, and will be, repaid by 2030. And under reclamation law, capital costs of the project must be repaid within 40 years.

I wouldn't disagree with Mr. Graff's comment that we haven't paid as much as we should have paid at this point, but all of those costs will be repaid by the date prescribed by Congress.

Senator FEINSTEIN. Thank you. I think that's very helpful.

Mr. GRAFF. But without interest.

Senator FEINSTEIN. Thank you. I think that clarifies that.

I want to just say one thing about Mrs. McPeak. She booked two red-eye flights to get here—one to get here tonight and one to go home tomorrow. And as one who does the cross-continental, there is nothing worse, except if you live in Alaska, maybe.

[Laughter.]

Senator MURKOWSKI. Thank you for being here.

Senator FEINSTEIN. I'd just like you to know we very much appreciate it.

Mr. Guy, let me ask this question. You mentioned briefly in your testimony how Sites Reservoir will have benefits greater than traditional storage projects. Could you elaborate on this point?

Mr. GUY. Yes. Thank you, Senator.

Sites Reservoir, in my view, is really water storage for the 21st century, because it does provide the multiple benefits that I think you're suggesting. First, it's off-stream storage. It's in the coast range, on the west side of the valley, in about as good a place as you could find for off-stream storage. It will be fiscally sound, to the extent that it will utilize the existing conveyance facilities that are already in place. And it really provides the benefits that I think you're asking about, because you integrate it with other supplies within the region.

What that allows you to do is, it allows you to have additional water, or water in the river, during—in the Sacramento river, which, of course, is the primary river in the Bay-Delta system, during times of the year when that water will benefit salmon, steelhead. It can provide water-quality benefits in the delta. It can provide water for the environmental water account by being upstream of the delta and by essentially making that water available during critical times. You can essentially control the water to the point where you can provide these multiple benefits. And it's not a traditional yield. It provides you tremendous flexibility, by being upstream of the delta, to meet all of the various demands that are called for in the CalFed Program.

Finally, it really provides the opportunity for urban/rural partnerships. And, I think, building on Secretary Raley's comments, it really allows the rural/urban folks to work together in a partnership manner, I think, as we move forward long term.

Senator FEINSTEIN. Well, I'd just like to thank everybody. It's a long haul. I think we have a fine Chairman. Hopefully, we'll be able to move this bill.

What I'd like to do, if you would agree to it, Senator, is sit down with you and Mr. Raley and Mr. Wright after they finish their joint deliberations on the funding part of it, and see exactly where we are, and then hopefully be able to move the bill.

Senator MURKOWSKI. Well, we would look forward to working with you, Senator Feinstein, on this. The staff of this subcommittee will be happy to sit down and, as you say, once there's been an opportunity for you, Mr. Wright, and Mr. Raley to work through some of those issues. We will be working forward. Senator FEINSTEIN. Great, thank you very much. I appreciate it. Thank everybody.

Senator MURKOWSKI. I appreciate all that you all have put into this very complex and very necessary effort. So we appreciate your time and attention and your travel. So thank you. We're adjourned.

[Whereupon, at 5:20 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF BENNETT RALEY TO QUESTIONS FROM SENATOR MURKOWSKI

Question 1. Section 3(b) of S. 1097 approves the 2000 Record of Decision ("ROD") as a "framework" for addressing certain CALFED Bay-Delta Program components.

a. Does this approval, as a framework, rise to the level of codification of the ROD? Answer. Section 3(b) of S. 1097 states in part that:

The Record of Decision is approved as a framework for addressing Calfed Bay-Delta Program components consisting of ...[list of activities omitted]. The Secretary and the heads of the Federal agencies are authorized to carry out (undertake, fund, or participate in) the activities in the Record of Decision, subject to the provisions of this Act and the constraints of the Record of Decision, so that the Program activities consisting of . . . [list of activities omitted] . . . will progress in a balanced manner.

The bill does not codify any of the specific activities in the CALFED Bay-Delta Program Record of Decision (ROD). All activities included in the ROD need further study and environmental review before decisions on those activities can be made. The bill authorizes the Federal agencies to undertake studies, analysis and reviews necessary to make final project decisions.

b. To what extent do you feel this "approval" authorizes federal implementation of the ROD?

Answer. The language in Section 3(b) of S. 1097 (noted in the response to question 1a.), authorizes the Federal agencies to carry out activities in the CALFED Bay-Delta Program Record of Decision. However, this authority is subject to the provisions of the proposed bill.

Section 3(c)(1) of S. 1097 states that:

The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in this subsection in furtherance of Stage 1 of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this Act, if the activity has been subject to environmental review and approval as required under applicable Federal and State law, and has been approved and certified by the [CBDA] to be consistent with the Record of Decision.

Section 3(c)(1) read in combination with Sections 3(c)(2) and (3) of the proposed bill limits that authority to the specifically enumerated activities.

c. Do you believe approving the ROD as a "framework" affords you the necessary authority to carry out the activities in S. 1097? Activities in the ROD?

Answer. Approving the CALFED Bay-Delta Program Record of Decision (ROD) as a "framework" generally affords the implementing agencies the necessary authority to carry out the activities in S. 1097, which provides for implementing Stage 1 of the CALFED Bay-Delta Program. However, we recommend that additional language should be added to the proposed legislation to clarify the following:

1. Environmental Water Account (EWA). While the bill provides authority and participation for EWA program activities for the period years 4-7, we believe that the bill should authorize implementation of a long-term EWA in a fashion that supports the vision and flexibility envisioned in the ROD. The establishment and successful operation of a long-term EWA will be one of the most significant accomplishments of the CALFED agencies in reducing the conflicts between fisheries and water project operations.

2. Conveyance Program Elements. While the bill provides for expending funds and evaluating certain conveyance activities, it should also provide for conducting feasibility investigations on (a) increasing pumping to 10,300 cfs at H. O. Banks Pumping Plant, (b) designing and constructing a fish screen and intake at Clifton Court, and (c) evaluating the San Luis Reservoir Low Point Project.

Approving the ROD as a “framework” does not provide sufficient authority to the implementing agencies to undertake all ROD enumerated actions as this encompasses more than is authorized under S. 1097 which covers only Stage 1 implementation—years 1-7 of the 30-year Program. The Administration does not support giving blanket authorization to CALFED program components, as this bill proposes. Individual project components must go through their own NEPA analysis, and have separate authorizations. However, the Administration is willing to continue to work with Congress on the challenges inherent in moving forward expeditiously on important projects, while still ensuring oversight on the behalf of taxpayers and the environment.

d. Does this provision connote that such activities are to be carried out consistent with the ROD, as is mentioned elsewhere in S. 1097? How much latitude does it give the Secretary of the Interior in implementing aspects of the 30-year plan outlined in the ROD?

Answer. Yes, a general interpretation of Section 3(b) in combination with other sections of the bill, implies that implementation of the CALFED Bay-Delta Program Record of Decision (ROD) should progress in a balanced manner, consistent with the ROD. The ROD, as a framework, enumerates various activities that can be implemented to achieve the Program objectives. Varying combinations of activities could conceivably be employed to achieve those objectives. Consequently, the Secretary of the Interior would have discretion in implementing those actions that would achieve the objectives rather than being specifically held to implementing all enumerated activities. However, the bill would not re-authorize CALFED for the full 30 years.

e. How does this section § 3(b) compare with the more explicit authority in § 3(c)(1) for federal agencies to carry out actions in this subsection in furtherance of Stage 1 of the ROD? Does the former, in your view, confer more general authority than the activities in § 3(c)?

Answer. As alluded to in the question, Section 3(b) provides for generally implementing the CALFED Bay-Delta Program in a balanced manner, consistent with the Record of Decision (ROD). Section 3(c)(1) enumerates specific activities to be carried out by the Federal agencies during Stage 1 of the CALFED Bay-Delta Program. Section 3(c) appears to limit the broader grant of authority in Section 3(b) since Section 3(b) is subject to the provisions of the proposed bill, including Section 3(c). Section 3(c) also limits activities that should be pursued, but the activities listed are broad and correspond to most all of the actions listed in the ROD.

Question 2. S. 1097 authorizes appropriations for a host of CALFED program components, some of which federal agencies already have authority to perform.

a. How much money is currently being spent on activities that could be identified as consistent with program components identified in S. 1097 (e.g., activities in § 3(c)(3), such as water storage, conveyance, water use efficiency, and ecosystem restoration)? In other words, to what degree is the new appropriation level authorized by S. 1097 above and beyond federal funds currently being spent on these types of activities?

Answer. A collective investment of approximately \$1.925 billion has been made in Years 1 through 3 from numerous Federal, state and local funding sources, which has contributed to project accomplishments in the program areas of water supply reliability, drinking water quality, levees, ecosystem restoration, watershed, science and oversight and coordination. Of the \$1.925 billion, \$1.204 billion was state funding, \$491 million was local funding and \$230 million was Federal funding. The Federal investment for all directly related programs and projects that contribute to achieving the CALFED Record of Decision objectives within the geographic solution area, Category A Programs, is a total of \$230 million.

Although CALFED-related activities have been funded under existing authorities, these should not be considered a baseline for CALFED funding. Any CALFED funding in the context of a re-authorized program must be considered in the larger context of what is necessary to achieve program goals.

b. What would the benefit be in terms of federal appropriations of having the authorization provided under S. 1097 versus continued funding under existing authorizations?

Answer. Over the past two fiscal years, funding for CALFED activities has been appropriated through Reclamation’s Water and Related Resources account, rather than through Reclamation’s Bay-Delta account. This has occurred because Congress

has refused to fund the Bay-Delta account without CALFED Program reauthorization. The impact of this to Reclamation is that increased funding in specific Central Valley Project line items in the Water and Related Resources account for in-lieu Bay-Delta activities potentially decreases the amount of funding available overall in Water and Related Resources to Reclamation core mission activities.

If the CALFED Program is reauthorized under S. 1097, funding could be provided directly to Reclamation's Bay-Delta account, reducing funding impacts to Reclamation core mission activities. There is also a benefit to Reclamation and to the CALFED Program if other Federal CALFED agencies receive authority and funding for CALFED activities directly through their own appropriation process. Program authorization and direct funding will ensure the full spectrum of CALFED Program elements can be funded and implemented in a balanced manner. Without authorization of S. 1097, only those program activities for which agencies currently have authority can be implemented or funded, potentially upsetting the balance of progress across the entire Program.

c. What would be the consequences for federal appropriations of not enacting this legislation?

Answer. Not enacting legislation and subsequent appropriations places the implementing Federal agencies in the potential position of redirecting funds away from core missions in order to meet authorized CALFED Bay-Delta activities. This could have adverse effects on programs that benefit California and other states.

Also, Congress has indicated in House Report 108-357, Making Appropriation for Energy and Water Development for the Fiscal Year Ending September 30, 2004, and for other Purposes, that it will be difficult for Congress to continue its support of the CALFED Bay-Delta Program and enact fiscal year 2005 appropriations absent authorizing Program legislation.

Question 3. With regard to the relationship between federal and state activities and the implementation of the CALFED Bay-Delta Program—

a. What is the function of the California Bay-Delta Authority, and how is it expected to interact with federal agencies and their activities under S. 1097? Specify this relationship especially with respect to the Department of the Interior.

Answer. The California Bay-Delta Authority (CBDA) was established by State legislation enacted in 2002 to provide a permanent State governance structure for the collaborative State-Federal effort that began in 1994. Pursuant to that legislation which became effective January 1, 2003, the CBDA formally assumed responsibility for overseeing State implementation of the CALFED Bay-Delta Program. The legislation calls for the CBDA to sunset on January 1, 2006, unless Federal legislation has been enacted authorizing the participation of appropriate Federal agencies in the CBDA.

The state legislation specifically charges the CBDA with ensuring balanced implementation of the Program, providing accountability to the Legislative, Congress and the public, and ensuring the use of sound science across all Program areas. The CBDA is a coordinating body and has no legal authority over Federal agencies. Final decisions on actions continue to reside with the implementing/funding agency.

Six Federal agencies are named as members of the CBDA including three from the Department of the Interior: the Secretary of the Interior, the Operations Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, and the Regional Director of the U.S. Bureau of Reclamation, Mid-Pacific Region. Also named are the Regional Administrator of Region IX of the U.S. Environmental Protection Agency, the District Engineer of the Sacramento District of the Army Corps of Engineers and the Regional Administrator of the Southwest Region of the U. S. National Marine Fisheries Service.

Federal participation in the CBDA is intended to promote coordination and interaction with state agency counterparts thereby assisting both the state and Federal agencies to more effectively meet their common goals and obligations. The existing coordination efforts would not markedly change with the enactment of the bill other than the Federal members of CBDA would become voting members. But, while coordination efforts would not change significantly, a number of complex institutional and legal issues would need to be addressed. For example, we question whether it would be appropriate for Federal members to cast votes on financial matters before the CBDA which are entirely within the purview of the State, such as the transfer of funds from one state agency to another. Another example is the issue of whether the State's conflict of interest codes would apply to Federal members of the CBDA; and how we would resolve this question if the California Fair Political Practices Commission insisted that the state laws are applicable and our Federal legal advisors disagree.

b. What unique role does (or could) the Bay-Delta Authority have that makes it advantageous over having the federal agencies working directly with the state agencies?

Answer. It appears that the Authority is intended by the State of California to serve as its primary point of contact with the federal government regarding all issues relating to CalFed. In addition, the Authority also serves as a forum for education of and collaborative discussions between the public, stakeholders, and state and federal agencies.

c. How do the federal CALFED agencies currently interact with the California Bay-Delta Authority?

Answer. Federal CalFed agencies attend Authority meetings, but do not participate as voting members. Coordination also takes place pursuant to the commitments made by the coordinating agencies in the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding (Implementation MOU). The Implementation MOU sets out the roles and responsibilities of the CALFED Agencies in the implementation of the CALFED Bay-Delta Program and covers such items as program integration and balance, financing, public and tribal involvement, science-based adaptive management approach, environmental justice, local implementation, etc. The participating agencies meet twice a month, in addition to the CBDA meetings, to coordinate CALFED related programs and activities.

d. In your view, do federal agencies need authorization to become full partners in CALFED implementation or in implementation of activities in the ROD?

Answer. We believe that we can constructively continue our coordination efforts under the umbrella of the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding and through participation in the California Bay-Delta Authority meetings as non-voting members.

e. Are federal agencies participating in Bay-Delta Authority work groups? If so, how? If not, why not?

Answer. While the California Bay-Delta Authority does not have "work groups," the California Bay-Delta Public Advisory Committee (BDPAC) does have a number of stakeholder chaired subcommittees that focus on specific program elements and advance recommendations through the BDPAC for consideration by the implementing state and Federal agencies. Representatives of the Federal agencies regularly attend the sub-committee meetings to stay attuned to the stakeholders concerns. In addition, the Federal agencies coordinate through state and Federal agency meetings twice a month under the umbrella of the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding.

f. What are the advantages or disadvantages of having the Bay-Delta Authority?

Answer. As noted previously, the California Bay-Delta Authority (CBDA) provides a unique forum for discussion and coordination of the implementation of the various components of the CALFED Bay-Delta Program. This forum is complemented by the state and Federal agencies coordination efforts under the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding.

The disadvantage of the structure of the CBDA stem from a host of unresolved issues relating to the proposed direct federal participation in decision making by a State agency.

g. What authority does the Bay-Delta Authority have over federal activities? How are those actions coordinated? Are any actions by the Bay-Delta Authority binding for federal agencies?

Answer. The California Bay-Delta Authority (CBDA) is a coordinating body and has no legal or binding authority over Federal agencies. Section 79403.5(c) of the California State Water Code states in part that:

Nothing in this division shall be construed to restrict or override constitutional, statutory, regulatory, or adjudicatory authority or public trust responsibilities of any federally recognized Indian tribe, or any local, state, or federal agency, or to restrict or override authority or responsibility of state, federal, or local water project operations under applicable law and contracts.

The CBDA assists in prioritizing the CALFED Bay-Delta Program activities and funding to ensure balanced implementation; however, final decisions continue to reside with the implementing/funding agency whether state or Federal. Section 29423.(1) of the California State Water Code states: "Nothing in this division limits or interferes with the final decisionmaking authority of the implementing agencies."

h. If disagreements occur among stakeholders of the Bay-Delta Authority, what mechanisms are in place for resolution?

Answer. California Bay-Delta Authority (CBDA) members may attempt to reach agreement during the course of discussions and deliberations at CBDA meetings. In-

terested stakeholders may resolve issues through the California Bay-Delta Public Advisory Committee process, including advancing their issues through the various subcommittees to the main body. Finally, CALFED participating agencies may raise and resolve issues through their twice monthly meetings held under the auspices of the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding. To date, the CBDA has not adopted a formalized dispute resolution process.

i. Do you have recommendations for the Committee on legislative language to address this governance issue?

Answer. Because of the issues associated with being a voting member, we recommend that the legislation authorize the Federal agencies to continue to work with the CBDA in order to enhance the coordination of the CALFED Bay-Delta Program. As previously noted, at the present time, we do not feel it is appropriate for the Federal members to participate as voting members of the CBDA.

Question 4. Section 3(d)(3)(A)(I) authorizes appropriations for planning activities and feasibility studies for enlarging Shasta Dam and Los Vaqueros Reservoir “to be pursued with project specific study.” Section 3(d)(3)(A)(ii) authorizes appropriations for planning and feasibility studies for Sites Reservoir and Upper San Joaquin River storage “requiring further consideration.”

a. How would this language § 3(d)(3)(A)(I) and § 3(d)(3)(A)(ii) change the way the Bureau of Reclamation (BOR) currently conducts its planning and feasibility investigations?

Sections 3(d)(3)(A)(i) and 3(d)(3)(A)(ii) of S. 1097 state:

(3) Program activities—(A) WATER STORAGE—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$102,000,000 may be expended for the following—(i) planning activities and feasibility studies for the following projects to be pursued with project-specific study—(1) enlargement of Shasta Dam in Shasta County (not to exceed 12,000,000); and (II) enlargement of Los Vaqueros Reservoir in Contra Costa County (not to exceed \$17,000,000); (ii) planning and feasibility studies for the following projects requiring further consideration—(1) Sites Reservoir in Colusa County (not to exceed \$6,000,000); and (II) Upper San Joaquin River storage in Fresno and Madera Counties (not to exceed \$11,000,000); (iii) developing and implementing groundwater management and groundwater storage project (not to exceed \$50,000,000); and (iv) comprehensive water management planning (not to exceed \$6,000,000).

Answer. Sections 3(c)(3)(A)(i) and 3(c)(3)(A)(ii) would not change the way the U.S. Bureau of Reclamation currently conducts planning investigations. All of the storage investigations will be conducted consistent with existing policies and Federal law.

b. What practical effect would the different language in clauses (i) and (ii) have on these studies?

Answer. There would be no effect on the way the studies outlined in Sections 3(c)(3)(A)(i) and 3(c)(3)(A)(ii) are currently being conducted. The studies in clause (i) focus on modifications to existing facilities, while the studies in clause (ii) will include an evaluation of alternative project locations. This distinction is consistent with the CALFED Bay-Delta Program Record of Decision.

c. Would a CALFED project led by the Bureau of Reclamation (BOR) be required to meet all of the requirements guiding federal water resources development projects, such as the Principles and Guidelines?

Answer. Yes. The feasibility studies will meet all the requirements for feasibility investigations including Principles and Guidelines, U.S. Bureau of Reclamation Law, and necessary environmental documentation.

Question 5. Section 3(c)(3)(B)(I) authorizes \$45 million for several specific South Delta improvements.

a. Does this \$45 million represent only the federal share of such improvements? Sections 3(c)(3)(B)(i)(I)(aa) through (dd) of S. 1097 state:

“(B) CONVEYANCE—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$77,000,000 may be expended for the following—

(i) South Delta Actions (not to exceed \$45,000,000)—

(I) South Delta Improvements Program to—

(aa) increase the State Water Project export limit to 8,500 cfs;

(bb) install permanent, operable barriers in the south Delta;

(cc) design and construct fish screens and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities; and

(dd) increase the State Water Project export to the maximum capability of 10,300 cfs;”

Answer. Yes. A current proposal known as the South Delta Improvements Program includes increasing the State Water Project export limit to an average of 8,500 cfs, and installation of permanent operable barriers in the south Delta. The current schedule is to have this project approved and constructed by 2007. Cost estimates provided by the California Department of Water Resources for this proposal are \$120 million. The \$45 million would represent the estimated Federal share for this project.

b. What specific South Delta improvements will the federal government be involved in and how (e.g., construction, technical assistance, etc.)?

Answer. The U.S. Bureau of Reclamation (Reclamation) will be involved in the construction of several permanent operational barriers to protect fish and water levels in the south Delta as part of the South Delta Improvements Program. This participation is authorized and directed under the Central Valley Project Improvement Act, Title XXXIV of P.L. 102-575. Reclamation will provide technical assistance to the California Department of Water Resources for the design and operation of all proposed barriers. Reclamation will also enter into an agreement with the State that will define the operation of the Banks Pumping Plant at 8,500 cfs pumping capacity to meet the state and Federal Water Project's Coordinated Operating Agreement. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency may be involved in the clean water permitting actions required for construction of these facilities.

c. Where the federal government is concerned, what additional NEPA analysis would be required to carry out these activities?

Answer. NEPA compliance is required for all listed activities. The U.S. Bureau of Reclamation, in cooperation with the California Department of Water Resources, is currently preparing an Environmental Impact Statement/ Environmental Impact Report for the South Delta Improvements Program to document the decision-making process and environmental impacts for the following:

- (1) Increasing the State Water Project export limit to 8,500 cfs to support a U.S. Army Corps of Engineers diversion permit and conveyance of Federal water supplies;
- (2) Installing permanent, operable barriers in the south Delta;
- (3) Installing and operating temporary barriers in the south Delta until the fully operable barriers are constructed; and (4) Actions to protect navigation and local diversions not adequately protected by the temporary barriers.

d. In your view, can these South Delta improvements be accomplished without "avoiding adverse fishery impacts and in-Delta water supply reliability"—language noted in the ROD (p. 49)?

Answer. Yes. The operation of the permanent barriers and increasing the permitted pumping capacity to 8,500 cfs can be accomplished while avoiding the adverse impacts noted. Mitigation measures are being formulated to address the potential adverse fishery impacts associated with the implementation of the South Delta Improvements Project. However, assuring that there would be no additional fishery and water supply reliability impacts may reduce the Delta export water supply benefits resulting from the South Delta Improvement Program.

e. Do you believe statutory protection for these objectives is necessary as is provided under §§ 3(c)(3)(B)(i)(I)(aa) and (dd) of H.R. 2641?

Sections 3(c)(3)(B)(i)(I)(aa) through (dd) of H.R. 2641 state:

“(B) CONVEYANCE—Of the amounts authorized to be appropriated for fiscal years 2004 through 2007 under this Act, no more than \$77,000,000 may be expended for the following—

(i) South Delta Actions (not to exceed \$45,000,000)—

(I) South Delta Improvements Program to—

- (aa) increase the State Water Project export limit to 8,500 cfs; such increased pumping is conditional upon avoiding adverse impacts to fishery protection and in-Delta water supply reliability;
- (bb) install permanent, operable barriers in the south Delta;
- (cc) design and construct fish screens and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities; and
- (dd) increase the State Water Project export to the maximum capability of 10,300 cfs; such increased pumping is conditional upon avoiding adverse impacts to fishery protection and in-Delta water supply reliability;”

Answer. Statutory protection is not needed for fish species that are listed as either state or Federal threatened or endangered species. The language in the referenced section of H.R. 2641 is ambiguous in that it continues the use of a broad and undefined phrase “fishery protection,” rather than protection for specific defined

species. In addition, “in-Delta water supply reliability” is also subject to interpretation.

f. What actions are anticipated in the South Delta to minimize impacts on drinking water quality? Who will agricultural drainage and saltwater intrusion be d.) In your view, can these South Delta improvements be accomplished without “avoiding adverse fishery impacts and in-Delta water supply reliability”—language noted in the ROD (p. 49)? Note: This is the question, verbatim, as posed by the Senate.)

Answer. Note: Please clarify the question, if you feel our response does not answer the question posed. A basic purpose of the South Delta Improvements Program is to ensure water of adequate quantity and quality for agricultural diverters within the south Delta, and to benefit fisheries by reducing straying of salmon into the south Delta. The South Delta Improvements Program will have beneficial water quality and fishery effects, and will result in less than significant adverse impacts through implementation of needed mitigation measures. The type of action anticipated to minimize impacts on drinking water quality involves alternative operation of various tidal gates associated with the operation of the State of California Clifton Court Forebay.

Question 6. Section 3(c)(3)(C)(i) of S. 1097 authorizes appropriations for water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the Bay-Delta system.a. In the view of the Department of the Interior (DOI), does § 3(c)(3)(C)(i) of S. 1097 provide blanket authority for DOI and others to undertake water recycling and desalination projects in California (subject to the constraints of the subsection)?

Answer. No. While Section 3(c)(3)(i)-(v) provides authorization for appropriations to be expended on water recycling and desalination projects, it does not provide authority for the Secretary to undertake feasibility studies or construction of projects for those purposes. However, the Secretary already has feasibility study authority for water reclamation and reuse projects under P.L. 102-575, Title XVI.

b. How would this provision affect implementation and funding of previously authorized Title 16 projects?

Answer. Previously authorized projects under P.L. 102-575, Title XVI, as amended, are probably not directly impacted. However, Section 3(c)(3)(C)(iii)(IV) states that the Federal cost share of any water recycling project under this proposed legislation shall not exceed 25 percent or \$50 million per project, an increase over the current \$20 million per cap. This change would therefore affect new projects, but not already-authorized projects.

Feasibility study authority already exists under P.L. 102-575, Section 1604, for the U.S. Bureau of Reclamation to conduct water recycling and reuse feasibility studies.

Question 7. S. 1097 refers to the “beneficiary pays provisions of the Record of Decision.” The ROD states that “cost allocation plans will be based on the principles of beneficiary pays.” This principle state that costs, to the extent possible, shall be paid by the beneficiaries of the program actions.

a. S. 1097 authorizes specific appropriation amounts for various categories of activities. Within each of the categories, how will spending on individual projects be prioritized? For example, what method would be used to select ecosystem projects to receive funds, and how would available funds be distributed across selected projects?

Answer. The implementing Federal agency will determine which specific projects have priority within a program on a project-by-project basis. Federal agencies working with the Administration will submit annual budget requests for Congress’ review and appropriation. Annual requests for project funding and priority will be based on Federal parameters and budgetary guidance for that fiscal year.

The language of the proposed bill does not limit the Federal share of any project or any agency participation to 33.3%, but rather it limits total Federal participation in the Program to 33.3%.

Certain CALFED Bay-Delta program elements, including the Ecosystem Restoration Program, are predominantly implemented through grant programs. These grant programs have and will continue to target priorities established by the implementing agencies, and the CALFED Science Program along with stakeholder input. To the extent feasible, grant awards will be based upon competitive procedures.

b. In S. 1097, the federal portion of the cost of implementing the CALFED Program is limited to 33.3%; the bill, however, does not appear to guide federal cost sharing on individual activities. Under S. 1097, how would the federal portion of costs be determined for each of the studies and projects undertaken as part of CALFED? For example, what would be the federal cost-share responsibility for Shasta dam and for the Delta levees?

Answer. For several agencies the Federal portion of cost will be based on a specific project-by-project basis while other Federal agencies will base the cost sharing at the program level. Individual agencies will determine how to portion the costs for each of the studies, projects, and/or programs undertaken as part of the CALFED Bay-Delta Program.

The Federal costs for water resource studies and projects are based on cost sharing requirements and allocation methodologies outlined in Federal laws, policies and Executive level guidance, i.e., Principles and Guidelines.

The four feasibility level studies, including Shasta Dam Enlargement, within the Storage Program Element are being pursued with state cost sharing on a programmatic level. This arrangement allows either party to accomplish work with or without specific funding from either party, but provides for the crediting of costs of each party in the final reconciliation.

The project specific cost sharing will be addressed within the feasibility study and includes an evaluation of the combined factors of costs and benefits, the financial capability of the project beneficiaries and a cost allocation of project purposes. The final feasibility report will provide detailed information of the Federal and non-Federal cost sharing arrangement.

c. Because many federal agencies use federal appropriations on projects that under current law are eligible for a higher federal cost-share, would the language in S. 1097 restrict federal participation in a project to 33.3%? Would each individual federal agency's participation be limited to 33.3%?

Answer. Each Federal agency would have to submit a recommendation to the Office of Management and Budget (OMB) and the Administration for approval on how to handle that individual agency's interpretation of legislation and the 33.3% provision versus previous law(s) and policy. Agencies may determine the legislation supersedes previous laws and/or policy while other agencies may determine eligibility at higher Federal cost-shares rates. In both cases the agency's coordination and approval by OMB and the Administration would be required before either option was implemented.

d. Under S. 1097 and the ROD, how will the cost of ecosystem restoration be allocated among the federal, state, and local CALFED sponsors, recognizing the difficulty of identifying direct beneficiaries of ecosystem restoration?

Answer. Our current view is that if multiple separable features or benefit categories are identified in a project the component for each individual separable feature, i.e., ecosystem restoration, will be determined based on principles and guidelines and the resulting cost-sharing for each separable project feature, i.e., ecosystem restoration, for that implementing agency or local CALFED project sponsor will be determined.

e. Ecosystem restoration and mitigation costs raise the question of legacy environmental harm and who is responsible. Are costs related to activities that will improve environmental health to be allocated to the historic water users who benefited from the projects that diverted water away and thus caused ecosystem damage, or are ecosystem restoration and mitigation costs to be allocated to the beneficiaries of the improved environment?

Answer. Site specific mitigation required and mitigation costs will be attributed to new projects for those individual new project's environmental impacts. Mitigation work will be allocated to the Federal and non-Federal partners involved in a project based on applicable mitigation laws and policies. Environmental restoration or re-establishment or betterment of the environment health will be cost shared based on the applicable agency's restoration laws and policies and cost shared according to those agency's environmental restoration standards.

Question 8. Will S. 1097 help implement the recent Colorado River agreement? If so, what provisions will aid the agreement's implementation?

Answer. Although this legislation will not directly assist with the implementation of the Colorado River Agreement, certainly implementation of the CALFED Bay-Delta Program will provide for increasing water supply flexibility, water quality and environmental restoration. In addition, this allows for a robust water transfer market. All of the elements which will aid California in keeping its promise to limit its future use of Colorado River water.

Question 9. In your testimony, you raise a number of concerns with S. 1097, as introduced.

a. You note that S. 1097 references two studies that the Administration has not cleared. Which studies are those?

Answer. The legislation refers to the Southern California Comprehensive Water Reclamation and Reuse Study and the Bay Area Regional Recycling Program, both of which are authorized under Title XVI of P.L. 102-575.

b. You note that S. 1097 presumes authorization of storage projects that may not be authorized after additional studies are completed. You further state that "CalFed should identify alternate paths for achieving the outcomes of the storage component of the program."

Do you have any suggestions as to how the storage component of the program can best be achieved?

Answer. The Water Supply Reliability Program Element of CALFED has several component actions that in varying combinations could be pursued to achieve increased water supplies. Should surface storage projects not be deemed feasible, complimentary water conservation and groundwater storage projects could be investigated and pursued. Implementation of CALFED Bay-Delta Program activities will be advised by the best available science and adaptively pursued so as to achieve the objectives of the Program which does not necessarily imply implementing all projects enumerated in the Record of Decision.

c. You state the Administration's concern that the bill gives blanket authorization to projects that have not undergone the typical Executive review process.

Which projects outlined in S. 1097 is the Administration concerned with?

Answer. The language in several sections of the proposed legislation appears to give blanket authorization to projects that have not undergone the typical project development and Executive review process. For example:

(1) Section 3(c)(3)(A)(iii) provides for both developing and implementing groundwater storage projects. Groundwater Projects are typically locally driven and Federal participation and funding should be subject to the responsible Federal implementing agencies feasibility investigations and review process.

(2) Section 3(c)(3)(C)(iii) directs the Secretary to review any seawater desalination and regional brine line feasibility studies, regardless of prior U.S. Department of Interior involvement in those studies. Such studies are again locally driven and should be adopted by the Administration and/or Congress only after being subjected to the same scrutiny that applies to Federally-sponsored studies.

d. With regard to the cross-cut budget, your testimony notes that the Department of Justice has alternate language. When will that language be provided to the Committee?

Answer. We are consulting with the Department of Justice and will provide the Committee with a response in the near future. Follow-Up Questions from Senator Gordon Smith

RESPONSE OF BENNETT RALEY TO QUESTION FROM SENATOR SMITH

Question 1. My Question does not relate directly to Cal-Fed, but rather to a situation in my state. On August 8, 2003, I joined with Senator Wyden and Congressman Walden to send a letter to Commissioner Keys, requesting that he reconsider the agency's decision to deny applicant status in an Endangered Species Act consultation to three irrigation districts in southern Oregon.

I received a response from the Pacific Northwest Regional Director, Bill McDonald, that he had been asked to respond on behalf of the Commissioner, and that he would not reconsider this earlier decision not to grant applicant status to these districts, yet provided few justifications as to how his decision had been arrived at.

I am concerned that his decision, which involves diversions from the Klamath Basin, was made at the regional level, even though two regions are involved. I am also concerned that this decision may have been made without review by the Solicitor's office in Washington.

In sum, the applicants (the Talent, Medford, and Rogue River Valley Irrigation Districts) applied to applicant status based on the Joint Consultation Regulations that define Applicant as "any person, as defined in Sec. 3(13) of the Act, who requires formal approval or authorization from a federal agency as a prerequisite to conducting the action." 50 CFR 402.02 (1999).

Was this decision made, reviewed or approved in Washington, D.C.?

How does the Department justify these districts applicant status, based on the fact that operation of facilities owned and/or operated by the districts is an inter-related and/or interdependent activity with Reclamation's operation of the Rogue River Basin Project?

Will you commit to reviewing this decision? I am willing to provide you with any additional documentation or prior correspondence you may require.

Answer. The Department will respond to Senator Smith directly with regard to this question.

RESPONSES OF BENNETT RALEY TO QUESTIONS FROM SENATOR FEINSTEIN

Question 1. I understand that the Administration supports the Calfed Bay-Delta Program and the August 28, 2002 Record of Decision. Do you believe that there has been an effective partnership between the Federal government and the State of California in working on these important water management issues?

- What do you expect for that partnership in the future?

Answer. The CALFED Bay-Delta Program Record of Decision contemplates a 30-year Program to improve the quality and reliability of California's water supplies and revive the San Francisco Bay-Delta ecosystem. The first three years of the Program's implementation have produced notable progress in improving water supply reliability and the ecological health of the Bay-Delta Estuary. This progress has been possible due to the cooperative and collaborative efforts of the implementing Federal, state and local agencies. This level of interaction is anticipated to continue into the future so as to realize the long-term benefits and expectations of the CALFED Bay-Delta Program.

- Do you have any recommendations for effective governance structure in CALFED legislation, bringing together State and Federal agencies?

Answer. We believe that we can constructively continue our coordination efforts under the umbrella of the Amended and Restated CALFED Bay-Delta Program Implementation Memorandum of Understanding and through participation in the California Bay-Delta Authority (CBDA) meetings as non-voting members.

Because of the legal and institutional issues associated with being a voting member, we recommend that the legislation authorize the Federal agencies to continue to work with the CBDA in order to enhance the coordination of the CALFED Bay-Delta Program. As previously noted, at the present time, we do not feel it is appropriate for the Federal members to participate as voting members of the CBDA.

Question 2. In her testimony on Calfed legislation last Congress before this Subcommittee, Secretary Norton stated that "Congress needs to authorize the Calfed Program so we can proceed with balanced progress on all resource fronts." Is that still the Administration's position?

Answer. Yes. Secretary Norton on many occasions has emphasized the Administration's commitment to making CALFED work for the long term. The Secretary has stated that the CALFED Bay-Delta Program is a prime example of a forward looking, long-term approach to water management and conflict resolution. The U.S. Department of the Interior (Interior) is committed to working through the CALFED process to increase water supplies and their reliability, improve the environment and increase the flexibility and accomplishments of the Bay-Delta system and California's water management infrastructure. Moving the Program from planning to implementation is a complex challenge given the fiscal realities at hand. Interior will continue to work closely with you to get the CALFED Bay-Delta Program authorized.

Question 3. In your oral statement at the hearing, you discussed the Southern California Comprehensive Water Reclamation and Reuse Study. However, you did not address the status of the second water recycling study in California—the Bay Area Regional Recycling Program—also authorized in Title XVI, P.L. 102-575. This feasibility study was completed in December 1999, but like the Southern California feasibility study, has not been submitted to Congress.

- What is the status of the Bay Area Study?

Answer. The report has been reviewed and processed. The U.S. Bureau of Reclamation recently transmitted the report for transmission to Congress.

- When will it be submitted to Congress?

Answer. The report was transmitted to Congress in early December 2003.

Question 4. How much funding has the Federal government contributed over the first three years of Stage 1 of this Program? How much has the State contributed?

Answer. A collective investment of approximately \$1.925 billion has been made in Years 1 through 3 from numerous Federal, state and local funding sources which has attributed to project accomplishments in the program areas of water supply reliability, drinking water quality, levees, ecosystem restoration, watershed, science and oversight and coordination. Of the \$1.925 billion, \$1,204 million was state funding, \$491 million was local funding and \$230 million was Federal funding. The Federal investment for all directly related programs and projects that contribute to achieving the CALFED Record of Decision objectives within the geographic solution area, Category A Programs, is a total of \$230 million. In addition, the Federal investment for all directly related and overlapping programs and projects that contribute to achieving the CALFED Bay-Delta Program Record of Decision objectives within and overlapping the geographic solution area is a total of \$600 million.

Question 5. How would you describe the level of cooperation and commitment of the other Federal agencies to this Program?

Answer. The level of cooperation and commitment of the participating Federal agencies has been steady, however, not uniform. This can be attributable to varying funding levels across the agencies, lulls in project implementation schedules and diversity of agency missions. The enactment of legislation and accompanying appropriations would aid in stabilizing the involvement and level of participation by Federal agencies.

Question 6. What is the status of the work on the following storage projects:

- Shasta Dam?

Answer. A Mission Statement Milestone Report has been completed. This report describes the plan formulation rationale, the study objectives and mission statement, as well as identifying a number of concept plans for future investigation. A thorough review of ecosystem restoration opportunities on the Sacramento River has been completed, as well as a preliminary investigation of potential effects of an increased reservoir on the McCloud River. A public outreach program has been initiated to involve stakeholders in the plan formulation process. A Notice of Intent/Notice of Preparation that initiates formal public scoping will issued in the spring of 2004.

The project schedule is as follows:

<i>Action</i>	<i>ROD</i>	<i>Current</i>
Report on Initial Alternatives		March 2004
Plan Formulation Report		June 2005
Draft Feasibility Report & EIS/EIR		March 2007
Final Feasibility Report & EIS/EIR	December 2003	September 2007

- Los Vaqueros?

Answer. A draft Planning Report has been completed that provides a preliminary analysis of the physical effects of enlarging the reservoir as well as an array of operational scenarios. Pending an advisory vote by Contra Costa Water District ratepayers in March 2004, work will be initiated on the state and Federal environmental compliance process as well as additional engineering studies. During the period before the March 2004 vote, agency coordination and identification of work activities will be accomplished immediately following the March vote.

The project schedule is as follows:

<i>Action</i>	<i>ROD</i>	<i>Current</i>
Local Advisory Vote		March 2004
Plan Formulation Report		November 2004
Draft Feasibility Report & EIS/EIR		June 2006
Final Feasibility Report & EIS/EIR	December 2003	June 2007

- Sites Reservoir?

Answer. Planning studies are focused on developing a purpose and need description and screening criteria for project alternatives based on the CALFED Bay-Delta Program Record of Decision. Work is continuing in areas of hydrology, water quality, and hydraulics modeling to assess potential project benefits and impacts. Reclamation is also reviewing DWR studies relevant to geology, engineering, and conveyance. Initial coordination with DWR on economic analyses for the feasibility study has begun. Reclamation has initiated agreements with several tribes to assess benefits and impacts to their Indian Trust Assets. Reclamation is also developing a work plan to assess potential Federal interest in the proposed North of Delta Off-Stream Storage plan.

The project schedule is as follows:

<i>Action</i>	<i>ROD</i>	<i>Current</i>
Report on Initial Alternatives		June 2004
Plan Formulation Report		September 2004
Draft Feasibility Report & EIS/EIR		June 2005
Final Feasibility Report & EIS/EIR	August 2004	June 2006

- Delta Wetlands?

Answer. The California Department of Water Resources plans to publicly release the In-Delta Storage Draft State Feasibility Report in December 2003. The State Feasibility Report addresses the technical and engineering practicality of a re-engi-

neered alternative that meets State design requirements. There will be a 30-day public review period subsequent to the final release of the State Feasibility Report which is anticipated in February 2004.

Both the CALFED Science Review Board and DWR are working on developing a plan for resolving water quality issues associated with water storage on the islands. The cost of an In-Delta Storage Project is estimated at \$774 million. The U.S. Bureau of Reclamation's involvement in the planning study is limited to technical assistance since a Federal feasibility study investigation has not been authorized by Congress.

A recommendation by the California Bay-Delta Authority regarding the future of the In-Delta Storage Program is scheduled for April 2004.

- Upper San Joaquin storage projects?

Answer. An interim planning report was completed in October 2003 describing the storage options still being considered. The findings in the interim report show that six surface storage projects appear technically feasible and will be considered in more detail. A Notice of Intent and Notice of Preparation will be issued in January 2004 to initiate formal public scoping. An alternatives report is planned for August 2004 that will describe the final set of alternatives to be considered in the study.

The project schedule is as follows:

<i>Action</i>	<i>ROD</i>	<i>Current</i>
Issue NOI/NOP		January 2004
Report on Initial Alternatives		August 2004
Plan Formulation Report		August 2005
Draft Feasibility Report & EIS/EIR		December 2006
Final Feasibility Report & EIS/EIR	December 2003	December 2007

Question 7. What is the status of work on new groundwater storage?

Answer. Within the CALFED Bay-Delta Program, the California Department of Water Resources is the lead agency working with local interests in evaluating new groundwater storage. To date, the conjunctive management program has shown great potential to provide short-term water supply benefits. Funding under the State's Proposition 13 has allowed many locally managed and controlled groundwater studies and pilot projects to be developed. Additional work is needed to identify more new groundwater projects and implement the projects currently identified.

Question 8. What are the significant water quality challenges confronting water users in the Bay-Delta. What progress is Calfed making with respect to these challenges?

Answer. Great strides have been made over the last few years in understanding how the Delta works, but much more scientific understanding is needed. Delta water quality is at times degraded for a number of reasons and this can impact use of the water by agriculture, fish and wildlife and municipal suppliers. Man-made and natural pollutants can enter the Delta from many upstream watersheds. Water diversions may affect the circulation patterns within the Delta. Point and nonpoint discharges within the Delta and upstream create both local and general water quality concerns. Water diversions upstream and in the Delta reduce the overall amount of fresh water in the system, which may concentrate degraded constituents and reduce the ability of the Delta to rely on natural flushing to resolve water quality problems. Significant tidal influences affect delta water quality in ways we are still trying to understand.

The CALFED Bay-Delta Program agencies primary approach to resolving water quality concerns is a competitive grant programs. The grant review process identifies the highest priority projects with the best potential for making near-term improvements and/or developing critical information necessary to resolving water quality problems. To date, the CALFED agencies have invested over \$34 million in 21 water quality projects through the Drinking Water Quality and Ecosystem Restoration Programs. Examples of the projects funded include:

- (1) Developing solution to improve dissolved oxygen conditions in the San Joaquin River near Stockton;
- (2) Evaluate mercury transport and uptake within the Delta watershed; and
- (3) North Bay Aqueduct Alternative Intake Study.

In addition, CALFED has supported regional efforts using innovative management to provide better water quality "at the tap," including the Bay Area's Bay Area Water Quality and Supply Reliability Program.

Water quality has also benefited from other CALFED Bay-Delta program elements. Most notably, the watershed program, which has funded over 50 projects

with over \$19 million, has benefits for both the ecosystem and for downstream water quality.

Question 9. What progress is being made in the ecosystem restoration component of the program?

Answer. Since its inception nearly 7 years ago, the Ecosystem Restoration Program (ERP) has facilitated funding for a variety of projects contributing to ecosystem restoration on within the ERP's geographic scope. ERP investments contributed to sustaining regulatory commitments for all CALFED Bay-Delta Program elements in Years 1 through 3. As of June 2003, 393 ecosystem projects have been funded in the approximate amount of \$480 million that address recovering endangered and other at-risk species, rehabilitating ecological processes, maintaining or enhancing harvestable species populations, protecting and restoring habitats, preventing establishment of non-native invasive species and reducing their impact, and improving or maintaining water and sediment quality. These projects have resulted in the thousands of acres of habitat being protected or restored and 75 new or improved fish screens have been installed. Additionally, 23 comprehensive scientific studies have been initiated to address areas of uncertainty and develop/enhance ecological data.

In addition, certain ecosystem restoration activities we are implementing pursuant to the Central Valley Project Improvement Act (CVPIA) are coordinated through the CALFED ERP Single Blueprint—concept for restoration and species recovery within the geographic scope of the ERP—and support the goals and objectives of the CALFED ERP. Implementation of CVPIA activities have resulted in positive effects to the numerous species and habitat types throughout the Central Valley ecosystem. The investment and results of those CVPIA program activities coordinated with the CALFED ERP are briefly highlighted as follows:

Habitat Restoration (\$124 million investment).

- Applied up to 800,000 acre-feet of Central Valley Project water each year to improve stream flows for salmon, steelhead, and other fish on the Sacramento, American, and Stanislaus Rivers and on Clear Creek.
- Removed five dams and 15 in-stream diversions in basin, providing improved access to over 24 miles of upstream spawning areas and enhanced survival of juvenile outmigrants.
- Acquired over 8,000 acres of riparian habitat.
- Restored or enhanced over 500 acres along 30 miles of basin streams.
- Acquired over 108,000 acre-feet of water through purchase or exchange to improve fish habitat and passage, stream flow, and water temperatures.
- Added approximately 156,000 tons of gravel to streams.
- Made operational changes to protect fish at the state and Federal pumping plants and at the Delta Cross Channel Gates.
- Implemented the Vernalis Adaptive Management Program.
- Acquired over 172 acres of riparian habitat.
- Restored or enhanced over 500 acres along 8.7 miles of basin streams to provide cover and shade.
- Enhanced over 5.4 miles of stream channel as instream habitat for anadromous fish.
- Acquired over 844,000 acre-feet of water for restoration of fish-friendly instream flows.
- Placed nearly 72,000 tons of gravel in San Joaquin River Basin streams to increase spawning habitat availability for native fishes.

Structural Measures (\$264.6 million investment)

- Screened or otherwise modified 19 diversions with a total capacity of over 6,700 cubic feet per second to reduce entrainment of juvenile fishes.
- Installed Shasta Dan temperature control device.
- Improved Coleman National Fish Hatchery-Raceways and installed a new water treatment system to protect hatchery production.
- Constructed Livingston Stone National Fish Hatchery on the mainstem Sacramento River to assist in the management and recovery of winter-run Chinook salmon.
- Modified and improved the Keswick Fish Trap.
- Screened 6 diversions to protect juvenile fish.
- Installed a seasonal barrier at the head of Old River.
- Removed a barrier to fish migration on the Cosumnes River.

Question 10. Please describe the so-called "Napa Proposition." Is it consistent with the Calfed Record of Decision? What is the significance of this effort?

Answer. The Napa Proposition is a process to develop feasible plans to implement key actions contained in the CALFED Bay-Delta Program Record of Decision (ROD). The primary objective of the initial Napa discussions was to develop a proposal for the integration of the State Water Project (SWP) and the Federal Central Valley Project (CVP) in a manner that is consistent with the CALFED ROD. The proposition was developed during meetings that were a continuation of an ongoing relationship between the project agencies and their contractors to ensure better coordination of the day-to-day operations of both projects.

The proposition is expected to moderately increase supplies for both projects. By better managing risk, it will allow higher allocations earlier in the year, increasing certainty for both CVP and SWP contractors. Most importantly, the proposition sets the stage for implementation of key CALFED Bay-Delta program elements, including increasing pumping capacity at the SWP Banks Pumping Plant to 8,500 cfs, implementation of the South Delta Improvements Project, continuation of the Environmental Water Account, and making improvements to Delta water quality among other things.

The Napa Proposition was really just the beginning of a process and no final decisions have been made. The proposition is being considered through a more formal decision-making process described in the CALFED ROD, including various stakeholders and public review activities.

Question 11. What is the California Bay-Delta Authority? Please describe the role of the Federal agencies in the Authority.

Answer. The California Bay-Delta Authority (CBDA), established by California legislation enacted in 2002 (California Bay-Delta Authority Act), provides a permanent governance structure for the collaborative State-Federal effort that began in 1994. The CBDA is charged specifically with ensuring balanced implementation of the Program, providing accountability to the Legislature, Congress and the public, and ensuring the use of sound science across all Program areas.

The CBDA is composed of representatives from six State agencies and six Federal agencies, five public members from the Program's five regions, two at-large public members, a representative from the Bay-Delta Public Advisory Committee, and four ex officio members who are the chairs and vice-chairs of the California Senate and Assembly water committees. Currently Federal agencies are engaging with their State CALFED partner agencies and have participated as nonvoting members in the first two meetings. This engagement takes the form of coordination and discussions on Program implementation efforts.

Question 12. What relationship, if any, does the Calfed Program have with respect to compliance with the Colorado River Agreement?

Answer. Implementation of the CALFED Bay-Delta Program will provide for increasing water supply reliability and flexibility in operations, and water quality throughout the Bay-Delta estuary. These anticipated improvements will aid in meeting the future water resource needs of the State as a whole and enable California to keep its promise to limit its future use of Colorado River water.

RESPONSES OF BENNETT RALEY TO QUESTIONS FROM SENATOR DORGAN

Question 1. Do you believe that it is important to enact Federal authorizing legislation for the Calfed Bay-Delta Program this Congress? Why or why not?

Answer. Yes, and we have said repeatedly that it is important for this Congress to pass CALFED legislation. Not enacting legislation and subsequent appropriations places the implementing Federal agencies in the potential position of redirecting funds away from core missions in order to meet authorized CALFED Bay-Delta activities. This could have adverse effects on programs that benefit California and other states. A lengthy protraction of this effort will also confound the planning efforts underway to satisfy the competing water resource needs of California.

Also, Congress has indicated in House Report 108-357, Making Appropriation for Energy and Water Development for the Fiscal Year Ending September 30, 2004, and for other Purposes, that it will be difficult for Congress to continue its support of the CALFED Bay-Delta Program and enact fiscal year 2005 appropriations absent authorizing legislation.

Question 2. Does the Calfed Bay-Delta Program enjoy broad support among stakeholders in California?

Answer. Stakeholders and the public have demonstrated a continuing interest and commitment to the goals outlined in the CALFED Bay-Delta Program Record of Decision (ROD) through participation in the California Bay-Delta Public Advisory Committee as well as numerous public meetings focusing on specific program and project implementation efforts. This commitment has been tempered by current fis-

cal realities and concerns that the broad goals of the ROD continue to be pursued, but over a more extended time frame.

Question 3. What implications, if any, does authorizing the Calfed Program have for other western states?

Answer. Authorization of the CALFED Bay-Delta Program in the context of implementing the water supply reliability and environmental improvements outlined in the Program's Record of Decision will have broad effects statewide and throughout the West. The Bay-Delta system provides drinking water to 22 million people, supports a trillion dollar economy, including a \$27 billion agricultural industry, and forms of the hub of the largest estuary on the west coast which is home to 750 plant and animal species and supports 80 percent of California's commercial salmon fisheries. Better management of California's water resources, will provide security for all other western states and compliment the achievements made in the Colorado River Agreement. In addition, providing stable supplies will enhance economic recovery for the 5th largest economy in the world. It further will provide interstate and international benefits by increasing populations of salmon and other anadromous fish on the west coast and by improving habitat for migratory wildfowl on the Pacific Flyway.

Question 4. When will the secretary complete the additional environmental reviews for the December 19, 2000 Trinity River Record of Decision, as ordered by the court? Please provide a schedule detailing interim steps and final deadline for completion.

Answer. The Court ordered deadline for completing the Trinity Supplemental Environmental Impact Statement (SEIS) is July 9, 2004. In the next few weeks, the U.S. Department of Justice anticipates requesting the Court's consideration of a delay in completing the SEIS. The interim steps required to complete the SEIS are (1) issue Administrative Draft SEIS, (2) agency comment period, (3) respond to agency comments, (4) issue public draft SEIS, (5) public comment period, (6) complete § 7 consultation under the Endangered Species Act, (7) respond to public comments, and (8) complete SEIS. A schedule for these interim activities will be available upon the Court's consideration of our request.

Question 5. Would enactment of S. 1097 require any adjustments in the amount or scheduling of releases of water from the Trinity River Division of the Central Valley Project that are provided for in the December 19, 2000 Trinity River Record of Decision issued by the Secretary?

Answer. No. The decision by the Secretary of the Interior on the amount and scheduling of releases of water from the Trinity River Division was made pursuant to provisions of the Central Valley Project Improvement Act. The proposed legislation does not address Trinity River Division operations.

Question 6. Would the Napa Proposal, if adopted, require any adjustments in the amount or scheduling of releases of water from the Trinity River Division of the Central Valley Project that are provided for in the December 19, 2000 Trinity River Record of Decision issued by the Secretary?

Answer. No. The Napa Proposition is silent on Trinity River Division operations. All project operation modeling has assumed implementation of the Trinity River Record of Decision. Although operations of the Trinity River Division can affect water supplies available in the Sacramento/San Joaquin River Delta, there is no reference in the Proposition regarding adjustments in the amount or scheduling of releases that are provided for in the December 19, 2000 Trinity River Record of Decision issued by the Secretary of the Interior.

Question 7. Does the Administration agree with the views expressed by the California Secretary of Resources in her October 2, 2003 letter to Senators Feinstein and Boxer that

"[N]othing in the Napa Proposal jeopardizes implementation the Trinity River Record of Decision;" and

"[T]he instream flow schedule in the Trinity River ROD is the foundation for restoration of the Trinity River and its native fish."

Answer. The U.S. Department of the Interior (Interior) agrees that nothing in the Napa Proposition jeopardizes the Trinity River Record of Decision (ROD). Interior also agrees that the Trinity ROD provides the basis for addressing the restoration of the Trinity River and its native fish in a scientific manner using an adaptive management strategy.

Question 8. Do you believe that the Trinity River ROD implementation should occur prior to implementation of the Napa Proposal? Why or why not?

Answer. The U.S. Department of the Interior supports moving forward on parallel tracks for implementation of these actions. Both Trinity River Division operations and integrated Central Valley Project/State Water Project operations (Napa Proposition) will be included in the Section 7 consultation under the Endangered Species

Act for the Operational Criteria and Plan for the projects. Neither action can be implemented until that consultation is complete. Implementation of these actions will also require completion of separate, required environmental impact analysis. At that point, final decisions can be made on implementation of these actions.

Question 9. Is it the Department's position that it is upholding its trust responsibility to the Hoopa and Yurok Tribes with respect to Trinity River restoration? Please explain.

Answer. The U.S. Department of the Interior (Interior) is upholding its trust responsibility to the Hoopa and Yurok Tribes by continuing to resolve the present Trinity litigation and support the Trinity Flow Record of Decision (ROD) by using those flows in all future condition model runs for the Operational Criteria and Plan. In addition, Interior is moving forward with the implementation of the non-flow aspects of the ROD. Interior has spent over \$100 million on the Trinity River Restoration Program.

Question 10. Has the Calfed Program to date helped to increase water supply reliability for urban and agricultural water users? Will it do so in the future?

Answer. Yes. In the first three years of implementation, the Environmental Water Account (EWA) has secured regulatory commitments to stabilize the water supplies of the State Water Project (SWP) and Central Valley Water Project (CVP) while providing additional protection to sensitive Bay/Delta fish species. Although 2003 was a dry year, both SWP and CVP allocations to their users south and west of the Delta were at least 75 percent of contractor requests by late summer. The EWA provides the Project and Management Agencies the ability to plan in advance for operations changes taken to protect fish. This proactive approach to resource protection not only reduces conflict and uncertainty, it permits more timely responses and helps to avoid crisis management. With EWA, time is not lost negotiating the scale, duration, or timing of an operations response, or in weighing of possible project impacts (since EWA compensates for them).

Authorization of a long-term EWA is necessary to maintain and improve water supply reliability with the flexibility envisioned in the CALFED Bay-Delta Program Record of Decision.

Question 11. Please list accomplishments of the Program to date with respect to ecosystem restoration. Answer. The CALFED Bay-Delta Program Record of Decision included the Ecosystem Restoration Program (ERP) Plan which detailed six goals for the ERP: (1) recover endangered and other at-risk species and native biotic communities; (2) rehabilitate ecological processes; (3) maintain or enhance harvested species populations; (4) protect and restore habitats; (5) prevent establishment of and reduce impacts from non-native invasive species; and (6) improve or maintain water and sediment quality.

Since its inception, ERP has funded more than 400 ecosystem restoration projects totaling nearly \$480 million. The number of projects and funds allocated is one way of measuring ERP progress, and it is worth noting that most ERP-funded projects meet more than one ERP goal. Therefore, the information in the following Table is based upon the topic areas which interconnect the ERP goals.

ERP PROJECTS BY TOPIC AREA AND FUNDING ALLOCATION ¹

Topic name	Amount (millions)	Percentage	# Projects
Fish Screens and Passages	\$112	23%	67
Local Watershed Stewardship	\$18	4%	50
Ecosystem Water and Sediment Quality	\$39	8%	47
Shallow Water Tidal and Marsh Habitat	\$62	13%	37
Environmental Education	\$8	2%	34
Fishery Assessments	\$9	2%	25
Restoration of Multiple Habitats	\$61	13%	28
Channel Dynamics and Sediment Transport	\$47	10%	26
Non-Native Invasive Species	\$7	1%	23
Riparian Habitat	\$22	5%	21
Floodplains and Bypasses	\$15	3%	12
Uplands and Wildlife Friendly Agriculture	\$45	10%	7
Special Status Species	\$14	3%	12
Environmental Water Management	\$6	1%	3
Natural Flow Regimes	\$11	2%	9

ERP PROJECTS BY TOPIC AREA AND FUNDING ALLOCATION ¹—Continued

Topic name	Amount (millions)	Percentage	# Projects
Totals	\$476	100%	401

¹ ERP figures include state, Federal and California Urban Water User funding sources.

One of the key successes of the CALFED Bay-Delta program was the recent (September 22, 2003) removal of the Sacramento splittail from the Federal threatened and endangered species list. The U.S. Fish and Wildlife Service (USFWS) found that threats to the species are being addressed through habitat restoration actions such as the CALFED Bay-Delta Program and the Central Valley Project Improvement Act, and that as a result, the splittail is not likely to become endangered in the foreseeable future.

Two projects, the Staten Island Project and the Robinson Ranch Merced River Salmon Restoration Project, illustrate both the progress of the ERP and its commitment to integrating ecosystem restoration goals with other Program element goals.

The Staten Island Project is a prime example of wildlife-friendly agriculture and habitat protection. In 2001, ERP contributed \$35 million (one-half of the purchase price) to help acquire Staten Island to allow for a contiguous habitat corridor reaching from Stone Lakes to the Mokelumne Forks confluence. This corridor was one identified in CALFED planning documents. Staten Island, now part of the Cosumnes River Preserve, provides winter habitat for sandhill cranes and other waterfowl, while a 9,200 acre wildlife-friendly farm continues operation under the auspices of The Nature Conservancy. As part of its wildlife-friendly operations, parts of Staten Island are periodically inundated with water which reduces the threat of catastrophic flooding in the North Delta. The Staten Island Project contributes to local economic stability by keeping farmland in production, enhancing wildlife tourism opportunities, and supporting Delta flood protection efforts.

The Robinson Ranch Merced River Salmon Restoration Project is an example of how agencies such as the USFWS, the U.S. Bureau of Reclamation, the Merced River Stakeholders Group and the landowner, Robinson Ranch, Inc. collaborated to restore Merced River reaches crucial to salmon spawning and rearing that were degraded as a result of floods, mining, and other activities. This multi-phased project addressed reconstruction of the river channel to scale the new channel form to match current, post-dam flows. By doing this, the flow of the river is refocused to self-maintain spawning beds and other restored habitats. The Robinson Ranch Merced River Salmon Restoration Project supports the understanding that when habitat is sustained, even at lower than historic flows, both ecosystem function and water supply reliability goals can be met. In this instance, the restored reach of the Merced River supports 25 percent of the salmon spawning of the entire river. Both wildlife and agriculture benefit from this project, which serves as an example of what can be achieved with a farmer who is an active and willing partner and beneficiary of restoration efforts.

The CALFED ROD commits the implementing agencies to integrating their activities with other program elements. The ERP is accomplishing this integration and linkages through the "Single Blueprint" concept for restoration and species recovery within the geographic scope of the ERP. The Single Blueprint is not so much a single document as it is the shared vision of ecosystem restoration that is sustained through collaboration and cooperation among ERP, the Implementing Agencies, other CALFED agencies and stakeholders.

Certain ecosystem restoration activities we are implementing pursuant to the Central Valley Project Improvement Act (CVPIA), commonly referred to as Category A&B projects, are coordinated through the Single Blueprint and support the goals and objectives of the CALFED ERP. Implementation of CVPIA activities have resulted in positive effects to the numerous species and habitat types throughout the Central Valley ecosystem. The investment and results of the CVPIA Category A&B program activities organized by the authorizing section of the legislation are as follows:

Anadromous Fish—Habitat Restoration (\$124 million investment).

3406(b)(1)—Anadromous Fish Restoration Program. Established AFRP, developed Restoration Plan to guide implementation of efforts; partnered with local watershed groups; acquired over 8,200 acres and enhanced over 1,000 acres of riparian habitat; restored over 5—6 miles of stream channel and placed 62,300 tons of spawning gravels; eliminated predator habitat in San Joaquin River tributaries; and provided for fish protective devices at seven diversion structures on Butte Creek.

3406(b)(1)—Habitat Restoration Program. Established Habitat Restoration Program and San Joaquin River Riparian Habitat Restoration Program; helped acquire conservation easements on 88,364 acres of native habitat and restore 1,111 acres.

3406(b)(2)—Dedicated CVP Yield. Up to 800,000 acre-feet of Central Valley Project water has been applied each year to improve stream flows for salmon, steelhead, and other fish on the Sacramento, American, and Stanislaus rivers and on Clear Creek. This water has also been used to increase survival of juvenile anadromous fish passing through the Delta on their way to the sea, and to assist the CVP to meet endangered species and water quality obligations.

3406(b)(3)—Water Acquisition Program (Anadromous Fish Focus). Acquired 913,952 acre-feet of water for anadromous fish from 1993-2002.

3406(b)(12)—Clear Creek Fishery Restoration. Removed Saeltzler Dam and diversion; increased flows; restored 2.0 miles of stream channel and 68 acres of floodplain; added 54,000 tons of spawning gravel; 152 acres of shaded fuelbreak have been constructed and 12 miles of roadway treated to control erosion.

3406(b)(13)—Gravel Replenishment and Riparian Habitat Protection. Developed long-term plans for CVP streams; placed 111,488 tons of gravel in Sacramento, American and Stanislaus Rivers.

3406(b)(23)—Trinity River Fishery Flow Evaluation Program. Conducted flow evaluation studies; completed EIR/EIS to analyze range of alternatives for restoring and maintaining fish populations downstream from Lewiston Dam; Record of Decision signed December 2000; completing Supplemental Environmental Impact Statement as directed by Federal court order. SEIS scheduled to be completed by July 2004.

Anadromous Fish—Structural Measures (\$264.6 million investment)

3406(b)(4)—Tracy Pumping Plant Mitigation. Improved predator removal; increased biological oversight of pumping; developed better research program, new lab and aquaculture facilities; improved and modified existing facilities.

3406(b)(5)—Contra Costa Canal Pumping Plant Mitigation. Established cooperative program for fish screen project for Rock Slough intake of Contra Costa Canal; 90% designs and environmental evaluation completed. New short-term, low-cost mitigation measures are being developed to allow for an extension of the construction completion date. Final design and construction pending results of CALFED Stage 1 and other studies.

3406(b)(6)—Shasta Temperature Control Device. Completed in 1997 at a cost of \$80 million. Has been operated to reduce river temperatures without stopping power generation operations (power revenue sales as a result of implementing the Shasta TCD are estimated to be \$25 million/yr).

3406(b)(10)—Red Bluff Dam Fish Passage Program. Completed interim actions and modification of Red Bluff Diversion Dam to meet needs of fish and water users; studies of fish passage alternatives is ongoing. Given guidance by the court on the timing of ESA and NEPA compliance activities, work on the EIS/EIR was suspended pending completion of the ESA consultation for the CVP as a whole, and the OCAP consultation. A final EIS/EIR is now anticipated in FY04.

3406(b)(11)—Coleman National Fish Hatchery Restoration and Keswick Fish Trap Modification. Construction of Livingston Stone National Fish Hatchery—the newly constructed hatchery contains facilities for broodstock holding, spawning, and rearing. The production capacity of the facility is about 250,000 juveniles. Between 30,000 and 250,000 juveniles have been reared at the facility annually since it was constructed. As a result primarily of the release of brood year 1998, it has been estimated that about 300 hatchery-origin winter-run chinook salmon adults from this program returned to the upper Sacramento River in 2001.

3406(b)(17)—Anderson-Cottonwood I.D. Fish Passage. Modified dam and operations to improve fish passage; designed new fish ladders and screens.

3406(b)(20)—Glenn-Colusa I.D. Pumping Plant. Constructed fish screen for 3,000 cfs diversion; completed water control structure and access bridge. Completed improvements on side channel.

3406(b)(21)—Anadromous Fish Screen Program. Established program; installed 17 screens and 3 fish ladders at diversions totaling 3,200 cfs capacity; removed 4 dams and 14 diversions. Three screens under construction, others in design. Once the screens under construction and in design are completed, Reclamation will have screened 75% of the diverted water on the Sacramento River.

RESPONSES OF BENNETT RALEY TO QUESTIONS FROM CHAIRMAN DOMENICI

Question 1. In your testimony, you note that appropriations for the Calfed Program are unlikely to reach S. 1097's \$880 million authorization level.

What is a reasonable federal appropriation target for fiscal years 2004 through 2007?

Answer. We cannot speculate as to a level of appropriations for future years, as those decisions must be made in the context of future budgets; our statement regarding the \$880 million is based on our experience with recent CALFED budgets. The CBDA has launched an effort to re-examine the project milestones in the existing ROD to more realistically reflect likely funding and pace of the program.

Question 2. It is my understanding that S. 1097 will not solve all of California's water problems. Instead, these are numerous California water projects that are not included in the 2000 ROD.

What California water issues are resolved by S. 1097?

Answer. Your understanding is correct. The proposed legislation sets out the CALFED Bay-Delta Program Record of Decision as a framework within which the implementing agencies will undertake actions within the CALFED Bay-Delta solution area to protect drinking water quality, restoring ecological health, improving water supply reliability, and protecting and ensuring the integrity of Delta levees in a balanced manner. There are numerous other water management activities going on in California that, while compatible with CALFED, are for the most part not connected.

What additional authorization requests should the Committee anticipate for other California water projects?

Answer. Depending on the findings and conclusions of the surface storage feasibility studies, construction authorization may be requested. It is difficult to anticipate future needs for Congressional action on other California water projects.

Question 3. From your testimony, it seems that the federal government already possesses most of the authorities needed to implement the Calfed Program.

If that is the case, what is the most appropriate form for any Calfed legislation approved by this Committee?

Answer. The Federal agencies have been able to rely on over fifty existing authorities (passed by Congress) that continue to enable Federal agency participation. The key areas in which additional authorization is necessary are as follows:

Environmental Water Account (EWA)—Authorization is required to implement a long-term EWA in a fashion that supports the vision and flexibility envisioned in the CALFED Bay-Delta Program Record of Decision (ROD). The establishment and successful operation of a long-term EWA will be one of the most significant accomplishments of the CALFED Bay-Delta Program in reducing the conflicts between fisheries and water project operators.

Levee Stability Program—Authorization is necessary for feasibility study for risk assessment strategy, Delta Emergency management plan, dredged material reuse on Delta Islands, and best management practices to control and reverse land subsidence is needed as noted in the ROD.

Implement Conveyance Program Elements—Authorization is needed for feasibility studies for the increased pumping to 10,300 cfs at H.O. Banks Pumping Plant, fish screen and intake at Clifton Court, and San Luis Reservoir Low Point Project.

Ecosystem Restoration Program Financial Assistance—Authorization is needed to carry out the Ecosystem Restoration Program activities through the use of grants and cooperative agreements with non-Federal entities

Cross-Cut Appropriation—Interior supports the concept of a cross-cut appropriation which we believe will reduce inefficiencies and further improve Federal agency participation and recognition of implementation requirements. A cross-cut appropriation would more accurately reflect the contributions of the participating Federal agencies and lessen the risk to other Reclamation funded programs and projects in the Western states.

Question 4. The process followed by the federal-state working group to develop the CALFED Program included negotiating a complex suite of inter-related projects, issuing the Record of Decision, developing a State-based management organization, building financial and public support, and implementing a myriad of important state water policy modifications.

Do you feel that this approach is an appropriate template for other Federal-State water management relationships?

Answer. Yes. While this approach and adaptive process was developed in response to the complex and competing resource needs of California its fundamental elements and processes could work well elsewhere. The Bay-Delta Public Advisory Committee provides an effective coordination structure to facilitate stakeholder involvement in CALFED Program implementation. However, the newly formed state oversight agency, the California Bay-Delta Authority, does pose several complex legal and institutional issues between the state and Federal implementing agencies that effect management of the Program.

Based on experience to date, what would you do to improve the process?

Answer. The cooperative and collaborative approach to problem-solving is a hallmark of the CALFED Program. We continue to grapple with the evolving state and Federal agency institutional and legal roles in implementing the Program.

APPENDIX II
Additional Material Submitted for the Record

SOUTH DELTA WATER AGENCY,
Stockton, CA, October 28, 2003.

Senator DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re: S. 1097

DEAR SENATOR FEINSTEIN: The South Delta Water Agency is writing to express our appreciation for your efforts to resolve water related problems in California. At this time, Delta interests are negotiating with Central Valley Project and State Water Project Contractors to try and resolve some of the ongoing issues involved with the export of water from the Delta. Although the negotiations are encouraging, fundamental differences have yet to be worked out. In light of those differences, as well as the areas of agreement, we recommend that proposed legislation regarding CALFED not move forward at this time as the negotiations anticipate changes or additions to CALFED's Record of Decision. Notwithstanding this position, we offer the following suggestions which we believe would clarify and strengthen the bill without changing its intent and fundamental content. These comments do not include some of the other issues in our discussions, many of which we would eventually seek to have in legislation.

Our suggestions relate primarily to three issues. First, CALFED's premise of "all parties getting better together" does not take into account how the export projects have adversely impacted third parties. It is our position that Delta interests should not "get better" along with other interests, but rather should first be protected from the adverse impacts caused by exports. Hence, providing full mitigation to the projects' impacts should occur before the projects are allowed to increase exports or export rates. We believe our negotiations will soon define the Delta protections that must and can reasonably be provided to assure that the Delta's in-channel water supply and quality are adequately protected from the impacts of existing and proposed exports, and also provisions to reduce the over-commitment of New Melones water yield that has resulted from CVP operations. Our suggestions are compatible with our negotiations. Second, the suggestions are to help correct the confusion that has resulted from a prevalent belief that water storage capacity results in an increase in water supply regardless of whether the storage is filled with water that would otherwise be lost, such as by capturing excess Delta outflow. Storage can be used for other purposes, but can't increase water supply if it is filled with water that is basically just reallocated in time or in purpose of use. Third, we propose some additions to the CALFED reporting requirements. We believe these additions are needed in order for Congress to be adequately informed on both the direct and the indirect consequences of the Program.

Our suggestions are as follows:

[Note: The suggested changes have been retained in subcommittee files.]

Again, our negotiations with export interests anticipate changes to the CALFED ROD and programs thereunder. Until such negotiations are finalized, we do not think any legislation should go forward at this time as we will be proposing additional specifics for such legislation. We do believe the parties' negotiations will be completed sometime near the end of November, and we will then know better the areas of agreement and disagreement. Notwithstanding this, the above suggestions are an indication of our position on what needs to be done through the CALFED process. We also want to thank you again for your past discussions with us on var-

ious matters, including your discussions on flood control and estate taxes with Alex Hildebrand.

Very truly yours,

JOHN HERRICK,
Counsel and Manager.

STATEMENT CLIFFORD LYLE MARSHALL, CHAIRMAN, ON BEHALF OF THE
HOOPA VALLEY TRIBE, HOOPA, CA

Chairman Murkowski, and members of the Subcommittee, the Hoopa Valley Tribe respectfully requests that the Congress not extend authorization of the Calfed program prior to implementation of the Trinity River restoration record of decision consistent with existing federal statutes, including the Central Valley Project Improvement Act.

Throughout California and in many parts of the Nation, the Trinity River is recognized as one of the last wild and scenic rivers in America. It is a natural resource treasure that should be protected for the benefit of all Americans. For communities of the North Coast, the Trinity River supports a regional economy based on commercial and sport fishing, recreation and tourism. Most importantly from the perspective of the Hoopa Valley Tribe, the Trinity River is central to our religion and culture, and it is the source of our fishery on which we have depended since time immemorial.

The United States Bureau of Reclamation formally proposed diversion of the Trinity River to the Central Valley in 1952. Having been advised by the Secretary of the Interior that slightly more than 50% of the Trinity's flow at Lewiston, California, would be diverted and that the balance would remain available for release to the Trinity River, Congress authorized the Trinity River Division (TRD) of the Central Valley Project (CVP) in 1955. To this day, the Trinity River is the only source of CVP water that is imported to the Central Valley.

In order to protect North Coast communities from the effects of the Trinity River Division, Congress expressly limited diversions from the Trinity River to that water deemed by the Secretary to be surplus to the needs of Trinity River basin fish and wildlife and communities downstream of Lewiston Dam.

The State of California issued a number of permits associated with the Trinity River Division in 1959.¹ Among the conditions established by the state in the permits were Condition 8² and Condition 9³ that, consistent with Congress' instruction, recognized and protected the area of origin interests of Trinity/Klamath River basin.

Tragically, upon completion of the Trinity River Division in 1964, the Bureau of Reclamation instead diverted up to 90% of the Trinity's flow at Lewiston with immediate and devastating effects on the fishery. Trinity River fish species today are listed or are candidates for listing under the Endangered Species Act. Tribal, sport, and commercial fishing interests, along with federal, state, and local governments have spent the last 35 years working to restore the river and limit diversions to what Congress originally intended.

In a series of laws, the United States Congress acted to restore the Trinity River fishery to those population levels that existed prior to construction of the Trinity River Division. The "Trinity River Flow Evaluation—Final Report" was completed in June 1999, and the Secretary of the Interior, with the support of the State of California and the concurrence of the Hoopa Valley Tribe, adopted the Report's fishery flow requirements in December 2000.

¹State Water Permits under Applications Nos. 5627, 15374, 15376, 16767 and 16768 (September 16, 1959).

²Condition 8. "Permittee shall at all times bypass or release over, around or through Lewiston Dam the following quantities of water down the natural channel of Trinity River for the protection, preservation and enhancement of fish and wildlife from said dam to the mouth of said stream;

October 1 through October 31—200 cfs
November 1 through November 30—250 cfs
December 1 through December 31—200 cfs
January 1 through September 30—150 cfs

Any water released through said Lewiston Dam for use in the fish hatchery now under construction adjacent thereto shall be considered as partial fulfillment of the above schedule."

³Condition 9. "Permittee shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users."

The fishery flows require 47% of the Trinity's average annual flow; the remaining 53% is available for diversion to the Central Valley, practically the same volume originally intended to be diverted by the Bureau of Reclamation when it proposed the project in the 1950s.

Regrettably, the Bureau of Reclamation has been barred from releasing the water needed for Trinity River restoration as a result of litigation filed by the Westlands Water District and the San Luis and Delta-Mendota Water Authority, among others. That litigation is now pending in the Court of Appeals for the 9th Circuit. The State of California has filed a brief in support of the Trinity River restoration decision. In the meantime, Trinity restoration remains on hold; it is now seven years past the deadline Congress set for the Secretary to get the restoration program underway.

On July 18, the Bureau of Reclamation and the Resources Agency completed a "Draft Proposition Concerning CVP/SWP Integrated Operations", also known as the "Napa Proposal". Certain aspects of the Napa Proposal require enactment of authorizations provided for in S. 1097. We believe that, in its present form, the Napa Proposal is likely to generate misunderstanding and future causes of controversy over the relationship between the coordinated operation of the federal and state water projects in the Central Valley and the priority established under federal and state law to water from the Trinity River Division for: (1) fish and wildlife preservation and propagation in the Trinity River; and (2) other beneficial uses of water by Humboldt County and users downstream of Trinity River Division facilities.

The Napa Proposal, among other things, will enable increased exports of water from the San Francisco Bay Delta through coordinated operation of the State Water Project and the Central Valley Project. Nothing in the Napa Proposal or S. 1097 recognizes the fact that the restoration of the Trinity River requires a reduction in the diversions of Trinity River water to the Central Valley.

It is generally understood that the Westlands Water District and San Luis and Delta-Mendota Water Authority will be major beneficiaries of the increased Delta exports enabled by the Napa Proposal if implemented by means of the authority and funding provided for in S. 1097. Westlands Water District and San Luis and Delta-Mendota Water Authority have recently proposed reductions in the planned Trinity River flows in order to increase the benefits they expect from the Napa Proposition. The Department of the Interior and the Hoopa Valley Tribe rejected the reductions because they lacked acceptable scientific justification. We do not believe that the Congress should make the benefits of CalFed available to those entities so long as they persist with their attacks against Trinity River restoration.

Governor Davis' administration addressed the Napa Proposal in an October 2, 2003, letter (attached) from Resources Secretary Mary Nichols to Senators Feinstein and Boxer, in which Secretary Nichols stated:

nothing in the Napa Proposal jeopardizes implementation of the Trinity River Record of Decision (ROD). In fact, the proposed revisions to the SWP/CVP Operations Criteria and Plan (OCAP) assume that the Trinity River ROD will be implemented as envisioned in December 2000.

The State continues to support the Hoopa and Yurok Tribes, and Trinity County in their efforts to implement the Trinity River ROD . . . We believe the instream flow schedule in the Trinity River ROD is the foundation for restoration of the Trinity River and its native fish, and we will insist this issue is settled prior to implementation of the Napa proposal.

We are grateful for Secretary Nichols position, but we have no indication whether California's incoming administration will adhere to it. At the same time, the Bureau of Reclamation has informally advised us that the Napa Proposal could be implemented without the need to reduce the amounts of water from the Trinity River Division needed for fishery restoration. However, the Bureau has declined to give us written reassurance to that effect, notwithstanding that federal and state laws clearly give priority to Trinity basin water needs over diversions to the Central Valley.

Our Tribe never intended to be drawn into Central Valley water management issues. But because of Westlands attack on our fishery, implementation of Trinity restoration may well be delayed until after planning decisions are made with respect to the Napa proposal, long-term Central Valley Project contracts have been renewed, and a revised operating plan for the state and federal water projects has been adopted. We cannot stand by while Central Valley planning decisions are made that potentially leave our rights at risk.

This is especially true in view of the final National Research Council Report, "Endangered and Threatened Fishes in the Klamath River Basin: Causes of Decline and

Strategies for Recovery (October 21, 2003). The report at pages 250-253 makes the following points (all are quotations):

Trinity River flows influence water temperature and quality in the lower Klamath River and its estuary (p. 250).

The Klamath River below Iron Gate Dam and the Trinity River have the same fish fauna, including runs of salmon . . . salmon and steelhead from the two systems continuously mix. *Id.*

Immigrating spawning adults and emigrating smolts from the Trinity River rely on lower Klamath River water temperature and quality to support their success in terms of egg quality, osmoregulatory ability, and survival. *Id.*

Efforts to conserve coho salmon and other declining fishes must take both systems into account. *Id.*

[T]he Secretary of the Interior in December 2000 issued a Record of Decision (ROD) recognizing that long-term sustainability of the Trinity River's fishery resources requires rehabilitation of the river (p. 251-252).

The ROD calls for specific annual flows designed to vary with water-year type and patterned to mimic natural variability in annual flows. (p. 252).

Because of lawsuits by Central Valley water users challenging the EIS/EIR, however, the new flow regime has not yet been fully implemented. *Id.*

It is vital that management of the Trinity River, including releases from Lewiston Dam, be viewed in the context of the entire Klamath watershed. The two systems are inextricably linked and are dependent upon each other for long-term success. Efforts are presently underway to use enhanced flow releases from the Trinity to reduce the likelihood of fish kills in the lower Klamath. This represents an important step forward in cooperative management for the sake of the entire basin, rather than a single component. (p. 252-253).

The foregoing statements by the National Research Council demonstrate the need to ensure that the waters of the Trinity River that are stored in the Trinity River Division of the CVP be released:

- (1) as required by the ROD for the mainstem Trinity restoration and
- (2) as required for fishery protection in the lower Klamath and pursuant to Humboldt County's 1959 CVP contract.

STATE OF CALIFORNIA,
RESOURCES AGENCY,
Sacramento, CA, October 2, 2003.

Hon. DIANNE FEINSTEIN,
U.S. Congress, Hart Senate Office Bldg., Washington, DC.

Hon. BARBARA BOXER,
U.S. Congress, Hart Senate Office Bldg., Washington, DC.

SENATORS FEINSTEIN AND BOXER: I am writing to clarify the state's position on the "Napa Proposal", which has been the subject of much interest and at times misunderstanding. The state agency participants in the California Bay-Delta Program have received several letters and questions from members of Congress, the California legislature, and interest groups. These letters and questions have raised valid concerns, and we take these concerns seriously.

THE NAPA PROPOSAL IS NOT A DECISION DOCUMENT

The CALFED process is designed to include a broad range of stakeholders, collaboration among the State and federal agencies, and the development of solutions that address multiple benefits based on the best available information. I remain committed to maintaining this open and transparent process, but I also recognize that from time to time various stakeholder groups will caucus and develop proposals to be considered within the scope of the Bay-Delta Program as a whole.

It is in the CALFED context that I believe the Napa Proposal was developed, and it is within this context that it should be considered. The Napa Proposal is not a CALFED decision document; it is a proposed set of State Water Project/Central Valley Project (SWP/CVP) operating rules that will be evaluated and considered as part of a larger set of actions to improve the water supply reliability, water quality, and ecosystem health of the Bay-Delta system.

These actions, as described in the CALFED Record of Decision, include the South Delta Improvements Program (to increase the SWP's pumping flexibility to 8,500 cubic feet per second), the Environmental Water Account, the Delta Mendota Canal/California Aqueduct Intertie, and related actions to protect water quality and local

diverters in the Delta. Each of these actions will be fully evaluated and reviewed through CEQA and NEPA, through the Bay-Delta Public Advisory Committee, and through other public processes established by the California Bay-Delta Authority (Authority).

SWP AND CVP OPERATIONS MUST BE BETTER COORDINATED TO MEET THE MULTIPLE OBJECTIVES OF THE CALIFORNIA BAY-DELTA PROGRAM

The Authority agencies have been working since the fall of 2002 to coordinate and integrate the assumptions and schedules of the above actions, so that elected officials, stakeholders, and the public have a better understanding of their costs, benefits, and impacts. But as the discussions continued, it became clear that progress would be stalled and that fewer water supply, water quality, and environmental benefits would be achieved through these actions unless the SWP and CVP worked to better coordinate their operations. As a result of the Napa discussions, we now have a proposal that may accomplish that goal, and a renewed commitment to support an integrated package of state and federal actions.

During the last two months, the Authority agencies and stakeholders have been working closely to analyze the impacts of the Napa Proposal with hydrologic and biologic modeling, together with other elements of the South Delta Improvements Program and alternative approaches to develop a long-term Environmental Water Account. These analyses will be fully described in draft environmental review documents to be issued for public review and comment later this year. Following an extensive public review process, the agencies expect to issue an integrated set of final decisions, together with a financing plan, in the summer of 2004. I remain confident that this integrated set of actions will significantly improve water supply reliability, water quality, and ecosystem health of the Bay-Delta system.

THE STATE CONTINUES TO SUPPORT IMPLEMENTATION OF THE TRINITY RIVER ROD

It is important to note that nothing in the Napa Proposal jeopardizes implementation of the Trinity River Record of Decision (ROD). In fact, the proposed revisions to the SWP/CVP Operations Criteria and Plan (OCAP) assume that the Trinity River ROD will be implemented as envisioned in December 2000.

The State continues to support the Hoopa and Yurok Tribes, and Trinity County in their efforts to implement the Trinity River ROD, including the development of the Supplemental Environmental Impact Statement as required by court order. We believe the instream flow schedule in the Trinity River ROD is the foundation for restoration of the Trinity River and its native fish, and we will insist this issue is settled prior to implementation of the Napa proposal.

Thank you for your continued support of the California Bay-Delta Program and efforts to provide for its federal authorization. If you have any further questions, please contact me directly or Tim Ramirez, Assistant Secretary for Water Policy and Science, in my office.

Yours sincerely,

MARY D. NICHOLS,
Secretary for Resources.

As a means of disentangling the Trinity River's prior entitlement to water from the Trinity River Division from Central Valley water resources planning, the Hoopa Valley Tribe seeks legislation to permit prompt implementation of the Trinity restoration program. (Attached.)

So long as the Trinity restoration program remains stalled, the Tribe will continue to intervene in matters involving California water planning that affect tribal trust resources. Our goal is a guarantee that federal and state laws that give priority to the use of Trinity River Division water for in-basin needs over exports to the Central Valley will be fully enforced as set forth in the Trinity River Record of Decision. The proposed legislation attached to this testimony would do that.

Thank you for your attention to our concerns.

ATTACHMENTS

Proposed Legislation Regarding Trinity River Record of Decision

Section 1.

The purposes of this Act are to meet:

- (a) Federal trust responsibilities to protect tribal fishery resources; and
- (b) Fishery restoration goals referred to in section 3406 (b)(23) of the Central Valley Project Improvement Act, Public Law 102-575, 106 Stat. 4706 (October 30, 1992).

Section 2.

(a) Notwithstanding any other provision of law, the record of decision by the United States Fish and Wildlife Service entitled "Trinity River Mainstem Fishery Restoration", issued by the Secretary of the Interior with the concurrence of the Hoopa Valley Tribe on December 19, 2000 (referred to in this section as the "record of decision"), shall be considered to comply with all provisions of law under which, and subject to which, the record of decision was issued.

(b) Upon enactment of this Act, the Secretary of the Interior, and any other person with respect to which the record of decision describes any right, authority, or obligation, shall implement and otherwise comply with the record of decision.

(c) The Secretary shall incorporate the record of decision into any review of the operation of the Central Valley Project pursuant to the National Environmental Policy Act.

